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Anthony M. Tung  
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New York, NY 10003  
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anthonym.tung@verizon.net

7 January 2015

Honorable Nicholas S. Musso, A.I.A.  
Chairman  
Vieux Carré Commission  
The City of New Orleans, LA

TESTIMONY IN REGARD TO 1036 ESPLANADE AND 1040 ESPLANADE

Dear Chairman Musso and Honorable Members of the Commission,

My name is Anthony Tung. I am a former member of the New York City Landmarks Preservation Commission (from 1979 to 1988) and a professor on international urban preservation at MIT (2006) and Columbia University (2012); and the author of *Preserving the World's Great Cities: The Destruction and Renewal of the Historic Metropolis*.

I offer this testimony in no one's employ and at my own expense as a friend of the Vieux Carré, one of the singular historic townscapes in the United States.

The matter before you, a proposal to renovate two properties and to adapt all, and or parts, of these existing structures for use as a restaurant has the potential to profoundly impair the unique character of the Vieux Carré by threatening its long-term viability as a place for people to live.

In making this assessment I am informed by my professional involvement in several suits brought by Smith Stagg, L.L.C., on behalf of Peter Yokum, a home owner in the Vieux Carré who is suffering from unregulated and (I believe) illegal violations of the city's noise ordinance due to excessive sound levels from nearby restaurants and bars.

Thus, having walked the Vieux Carré numerous times in the past as a visiting lecturer and having recently examined the quarter in the company of leading experts on nuisance noise, I am aware of the debilitating impact of unchecked restaurant, bar, and club noise on the residential quality of life.

The extreme sound levels on Bourbon Street are shocking and pertain directly to the matter before you. Given that the eastern portion of the French Quarter remains a generally quiet place of residential occupancy, and that the eastern boundary of the Vieux Carré (Esplanade Avenue), is remarkably idyllic: allowing an open-air restaurant at 1036 Esplanade and 1040 Esplanade courts the demise of residential habitation. As on Bourbon Street, heightened ambient noise from the proposed open-air restaurant can lead to a violent escalation of clamor, making nearby residential occupancy a nightmare.

Like in Venice, Bruges, and other historic cities in Europe and North America, a negative syndrome of decline can follow as, one by one in a domino effect, various residential occupants are driven out. This 'Venice-like' syndrome is already activated in the Vieux Carré where, in recent decades, residential population has dwindled, tourism services have mushroomed, and residential services have shrunk. (See attached note for details.)

Thereby, I believe the current proposal warrants your closest scrutiny.

In terms of its architectural features:

1. The impact of excessive noise can not be controlled if the restaurant function remains unenclosed behind walls—because regardless of the intent or assurances of the new property owner, once an open-air facility is approved, it will be extremely difficult to police noise pollution should a less sensitive occupant ever gain possession. This would constitute a permanent on-going injury to the district's well-being. It is a grossly inappropriate change of use.
2. Preservation of the strikingly handsome historic residential character of Esplanade Avenue will be injuriously affected as the restaurant's open-air commercial presence intrudes on its quiet domestic character.
3. The street facades and massing of the proposed structure constitute an alien building type in the historic urban landscape. Its forms are more consistent with a Post-war suburban commercial strip than with the "quaint and distinctive" character of the "toute ensemble" of the Spanish Colonial/French Colonial/American-Creole-Antebellum entrepôt. It is grossly inappropriate in terms of architectural form.
4. Finally, given the Vieux Carre Commission's long history of requiring new infill architecture consistent with a French Quarter Style—with traditional-looking structures that complete existing street-walls—approval of the current proposal raises a fundamental regulatory question: **Is the commission now abandoning a decades-old and highly effective policy?** —a policy which has made the Vieux Carre one of the most beloved and beautiful historic districts in America.

Sincerely,  
Anthony M. Tung

Notes: As per Tourism Gentrification: The Case of New Orleans' Vieux Carre by Kevin Fox Gotham in *Urban Studies Magazine*, Vol. 42, No. 7, June 2005:

- Between 1940 and 1970 the population of the Vieux Carre plummeted from 11,053 to 4,176, a loss of more than 50-percent, even as the population of the city as whole increased by 30-percent.
- From 1950 to 1999, the number of souvenir and t-shirt shops increased from 26 to 110; retail apparel stores increased from 14 to 42; music clubs increased from 7 to 27; hotels increased from 21 to 40; and art galleries increased from 10 to 40.
- From 1950 to 1999, the number of groceries decreased from 44 to 4; miscellaneous food stores declined from 44 to 19; hardware stores from 31 to 1; laundry services from 24 to 2.

2



## ROBERT L MILLER

ARCHITECT  
1491 West Highway 98  
Mary Esther, Florida 32569  
850-581-2174 - Phone  
850-581-0295 - FAX  
RLM@RLMarch.com

BUILDING CODES CONSULTANT  
CONTINUING EDUCATION SEMINARS  
PROFESSIONAL WITNESS  
ARCHITECTURAL SERVICES

January 7, 2015

**RE: Café Habana - Proposed Design Documents for VCC Submittal**

1040 ESPLANADE AVE / 1324 NORTH RAMPART,  
1036-1038 ESPLANADE AVE  
NEW ORLEANS, LA 70116

By: Rozas - Ward Architects & Palmisano Contractors

This review is at the request of concerned property owners adjacent to and in the vicinity of the proposed project. Use of this review is restricted to purposes of such persons.

The documents provided to the State Fire Marshal for "PRELIMINARY REVIEW" (see Fire Marshal review P0457374 dated October 29, 2014) were not dimensioned to allow for the plan reviewer to determine accurate occupant load calculations. Those documents indicated both first and second floor were intended for assembly use. Each floor had a kitchen to serve the dining on the respective floor. Square footage was indicated for only a portion of the areas of each floor which was assumed by the Fire Marshal reviewer for occupant load calculation. Due to the insufficient information being provided, the reviewer was unable to calculate correct occupant loads.

The documents presented for review now indicate a mixed occupancy of Assembly (Group A-2), to be used as a dining facility, and Residential (Group R-1 or possibly R-2). The plans indicate the intent to provide sprinkler protection which is required for both occupancy classifications. There does not appear to be any fire resistant rated separation indicated so the assumption would be that the project is being proposed as "non-separated" occupancy classification and compliance with IBC Section 508.3 would be required. In those circumstances, the entire facility must be protected in accordance with the most restrictive requirements of the occupancies.

Though this is a renovation of an existing facility, due to the extent of renovation construction, change of use, and reconfiguration of space, it is required to comply with Codes and Standards for new construction. The primary Codes enforced for new construction are the currently adopted Life safety Code (NFPA 101 - 2012) and the International Building Code (IBC - 2012) in addition to Orleans Parish and City of New Orleans ordinances and the additional Standards referenced by those Codes.

Upon review of the current revised documents under consideration for this project, the following issues are observed and deemed appropriate for comment:

1. The first floor of 1036 Esplanade was originally occupied as mercantile occupancy classification. That space has now been defined as what appears to be dining facilities and attached commercial kitchen defined in the IBC as occupancy Group A-2. For purpose of understanding, Group A-2 is defined as:

*Assembly uses intended for food and/or drink consumption including, but not limited to:*

- a. Banquet halls
  - b. Casinos (gaming areas)
  - c. Nightclubs
  - d. Restaurants, cafeterias and similar dining facilities (including associated commercial kitchens)
  - e. Taverns and bars
2. The commercial kitchen exhaust at the roof appears to be within 20 feet of the open patio of the adjacent residence. While not necessarily a Code issue, the grease laden aromatic vapors produce by the volume of cooking at this facility would prove objectionable which was noted in prior VCC comments.

3. Occupant load calculations in the submitted plans do not appear to be as defined by the various Codes and Standards enforced by the Louisiana State Fire Marshal or the City of New Orleans. Those methods are documented as follows:
- a. Demarcation of a "path of egress" within assembly areas intended for use as dining facilities so as to exclude those paths from areas used to calculate the occupant load is not found in either the NFPA 101 or the IBC in dining rooms. The result provides for an artificially reduced occupant load.
  - b. The occupant load (number of occupants in a space) of a dining area is calculated at 15 square feet per occupant based on the entire area to be occupied with the exception of fixed obstructions such as cabinetry or appliances used for service or structural members. Alternatively, fixed seating can be used and counted as such. No fixed seating was indicated, only an area designated for such.
  - c. Calculation of occupant load based on 15 square feet per occupant at the first floor interior dining areas indicated on the plans appears to be at least 60 as the area in question appears to enclose approximately 907 square feet excluding corridors and the bar. The plans indicate an occupant load of 57 without specifically showing the individual "fixed seating."
  - d. In addition, the exterior Dining under the canopy and the courtyard area having the same occupancy use must have the occupant load calculated at 15 square feet per occupant in accordance with the adopted codes.
4. This interior dining is proposed to egress through the area labeled "EXTERIOR PATIO". Again, the "egress path" demarcation falsely reduces the actual occupiable area to project an occupant load less than the appropriate calculations would provide. The Codes do not provide for reduction of occupant load due to egress paths which are properly included in the area used in the calculations.
5. A means of egress is proposed through an alleyway between this project and the adjacent residence. That alleyway has been measured at 32 inches maximum with reduction at the gate point by utility meters and electrical panel. That route is just to the left of a door indicated as an ADA Accessible door. The indicated route of egress to the public way from that door is through this alleyway thus designating the alley as an accessible route. Investigation of the 2010 ADA/ABA adopted for review by the State Fire Marshal does not indicate that the width is sufficient for accessible egress. The minimum egress width would require not less than 44" in accordance with the NFPA 101 and IBC and additionally would require fire resistance rated corridor protection which is not indicated. Attached photographs indicate the existing electrical panel and other meters protrude into the egress width up to 10" into the clear width in an accessible route. In accordance with the 2010 ADA Standard Section 307.2, protrusion is limited between 27 and 80 inches above the floor of an accessible route to 4" into an accessible route which further precludes this alley from use as an egress route.
6. Additional route protection includes the following issues observed:
- a. **Rated corridor protection** (minimum one hour is required but neither property appears to have those exterior bearing walls rated in accordance with IBC Table 601).
  - b. **Level route** (that alleyway is not paved as required by accessibility codes and standards)
  - c. **Clear width** (the gate at the Esplanade Avenue sidewalk exit from the alleyway is of the required 32 inches minimum measured with the gate opened 90 degrees)
7. The proposed dining at the second level on top of the existing filling station canopy has similar Code misinterpretations. The area there, though shown as reduced by low partitions to provide for a smaller occupant load, has the same "path of egress" demarcated so as to eliminate that path from the calculable area. The drawings indicate a calculated occupant load based on concentrated occupant load at 7 square feet per occupant and indicates a load of 77 occupants. Additional

notations indicate that somehow, the State Fire Marshal will condescend to reduce that area to an allowable 49 occupants thus permitting a single means of egress from that canopy.

The Codes in fact require the "calculated" occupant load be the minimum and do permit that load to be exceeded only if egress facilities and life safety protection are provided for the increased occupant load.

8. Further, regarding the seating on top of filling station canopy, the apparent area involved is 782 square feet which at 7 square feet per occupant is 112 occupants. The apparent intention with the proposed seating indicated at 7 square feet per occupant is that the space on top of the filling station canopy is to be used for **concentrated** load use such as found on a dance floor or other party type use similar to what is observed during Mardi Gras and other festivals in New Orleans. Due to the occupant load on the canopy exceeding 49, two means of egress are required by both the NFPA 101 and IBC from the filling station canopy but only a single means of egress is provided in these drawings.
9. Additional occupancy calculations are questionable at the ground floor where the only "occupied" dining area is indicated as partially under the filling station canopy. The Codes require all occupiable space in assembly occupancies to be accounted for. The entire space designated as "CATERING COURTYARD" and "EXTERIOR PATIO" is occupiable and while planters and other devices are indicated on the drawings, precise delineation of the occupiable space is not indicated. The NFPA 101 in Table 7.3.1.2 for Occupant Load Factors requires assembly use areas of "**Less concentrated use, without fixed seating**" to use 15 square feet for the net square footage of the area. Additional information is required to determine the precise occupant load allowed. The area in question appears to have a scaled square footage of 3,085 which when divided by 15 produces a calculate occupant load at the outdoor dining and patio of 206 occupants.
10. The total calculated occupant load of the ground floor dining and courtyard areas appear to be 272 in addition to the facility's upper floor of 112 for assembly in addition to the load of the residential occupancy. The apparent total occupant load then would be 384 subject to accurate dimensions and specific use being provided in future final construction drawings required for review.
11. Structurally, the existing filling station canopy, being a roof provided for weather protection, was not intended for human occupancy. If built under current Codes that canopy would have in addition to the loads imposed by the structure itself a required live load of 20 pounds per square foot which is sufficient for typical loads imposed by weather. However, the required design live load for assembly occupancy as proposed is **100 pounds per square foot** [see *IBC Table 1607.1*]. This required load is **500 percent greater** than the design capacity requirements of a filling station canopy. There is no evidence of increased structural support for that required load. If preservation of this existing facility is of concern, then any structural modifications should meet the local ordinances for preservation.

Though the drawings available for review are incomplete without any precise dimensions, I was able to transform them into drawings from which all dimensions and areas noted above were garnered. In my opinion, no further permissions should be granted without full submittal to the State and Local authorities and receipt of documents indicating compliance with the Codes and Standards and accessibility requirements for mobility impaired persons.

Should any questions arise regarding any of the comments above, please feel free to contact me.

Sincerely;



Robert Miller - Architect

Photographs of alley:

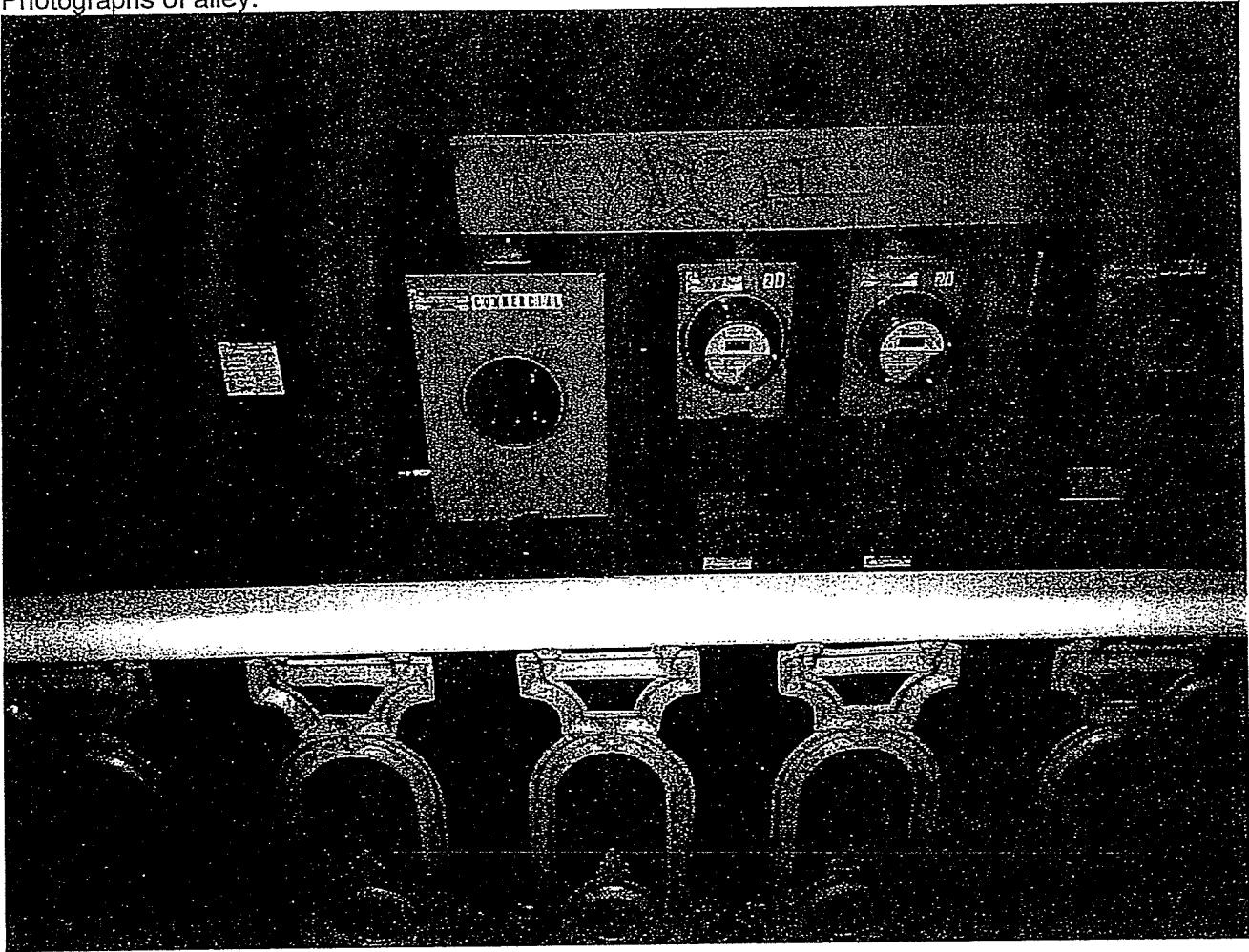
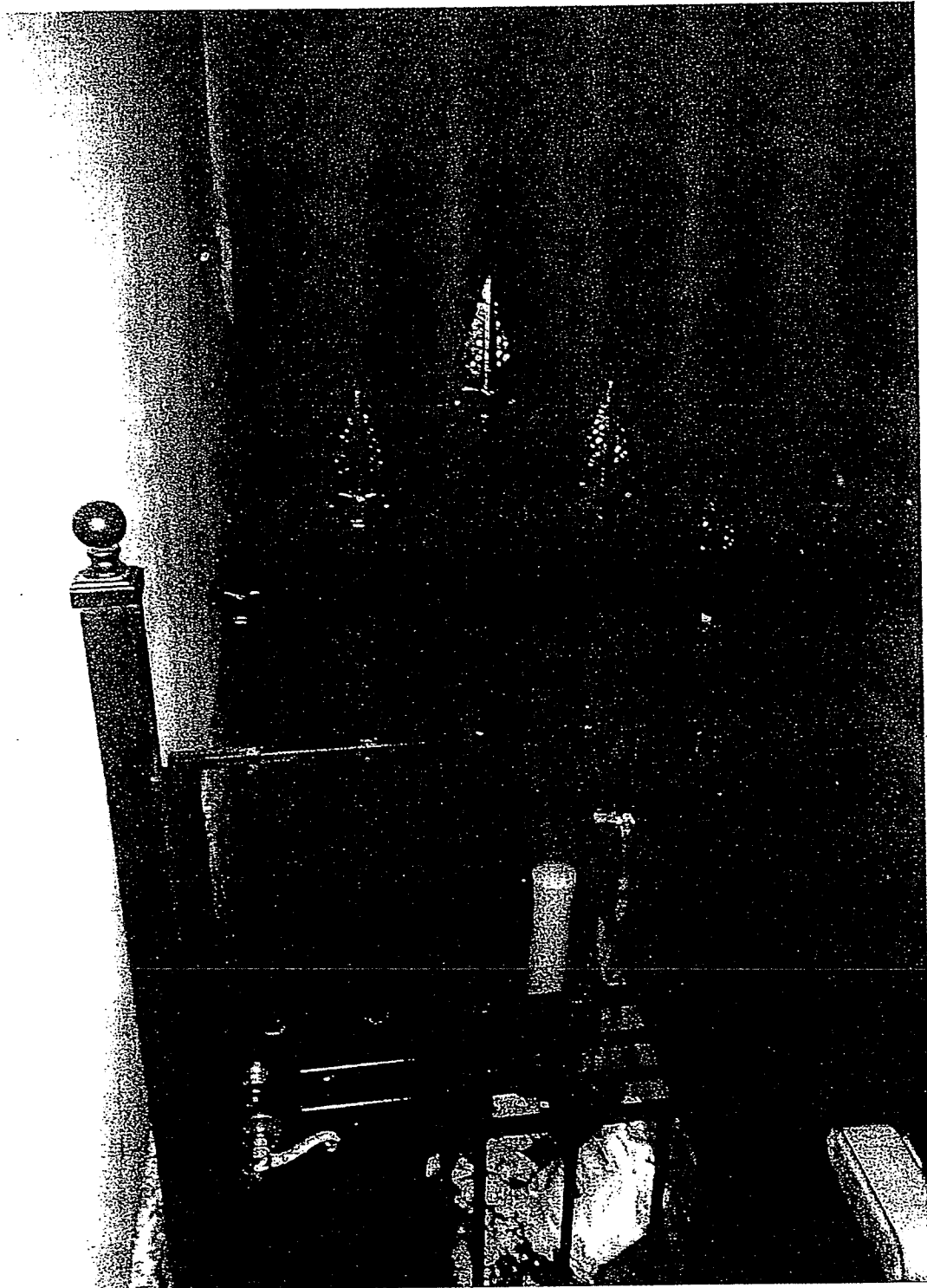


Photo showing building electrical panels and utility meters protruding into alley





Alley from public sidewalk showing the gate and unleveled ground surface  
Also shows plumbing drain cleanout and hose-bibb protrusion into alley



Utility panel box protruding into ally between gate and public sidewalk  
Note the non-level walking surface between the gate and public sidewalk

3

AFFIDAVIT

STATE OF LOUISIANA  
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary, came and appeared: ARNO S. BOMMER

A person of the full age of majority, domiciled in Harris County, Texas, who, after being duly sworn, did depose and say:

That he is employed as a consultant certified by the Institute of Noise Control Engineering, specializing in the science of acoustics, noise and vibration at Collaboration in Science and Technology Inc., in Houston, Texas;

1. Board Certification

I am board certified by the Institute of Noise Control Engineering, a process that involves qualifications and rigorous testing.

2. Previously certified by the Civil District Court as an expert in noise measurement and interpretation of the City of New Orleans Noise Ordinance and methodology previously relied-upon by Judge Ethel Simms Julien, in finding a nuisance bar in violation of injunction.

In previous cases, Hon. Ethel Simms Julien and the Hon. Christopher Bruno accepted me as an expert in noise and relied upon my findings.

I offer the following opinions with respect to the Café Habana based on the plans dated November 18, 2014:

1. A typical "busy" restaurant sound level is about 65 dBA. A very noisy restaurant can be 80 to 85 dBA.
2. The outdoor portions of Café Habana may occasionally exceed 80 dBA.
3. People tend to talk louder when there are other nearby sources of noise. The traffic on N. Rampart and Esplanade as well as the HVAC equipment and proposed fountains will provide background noise that patrons will have to speak over, causing them to speak with raised voices.
4. When the curtainwall doors are open, there will be two effects. By itself, the added noise from under the canopy might raise sound levels in the patio by 1 to

5 dBA. In addition, this increase may also cause the people in the patio area to speak louder, further increasing levels.

5. Other potential source of excessive community noise include HVAC condensing equipment at grade by the stairwell, a condenser unit on the roof, kitchen hood exhaust vents, doors slamming, and wait staff handling plates, trays, and silverware.
6. Although the existing two buildings along the residential property line provide a partial noise barrier, there is a large gap between these buildings adjacent to the stairs with only a low wall (about 6-ft tall). Sound from the courtyard and patio can travel directly through this gap to the adjacent residences.
7. The top of the stairs and 2<sup>nd</sup>-floor walkway are located right at the gap between the buildings. It appears from the plans that people on these stairs and walkway can look right down onto the adjacent residential property, and any sounds they make will travel directly onto the residential property.
8. The existing neighboring building on Rampart can reflect sounds from much of Café Habana through the gap between the buildings towards the adjacent residences.
9. The roof of the existing 2-story building also has a large overhang that can reflect sound from the courtyard and patio back down to the ground at the residences.
10. Taking into account distance effects, sound from a 65 dBA "busy" restaurant would be reduced to about 59 dBA at 50 ft (the approximate distance from the center of the restaurant to the nearest residences). This would be steady restaurant noise. If the restaurant sounds were between a "busy restaurant" and a "noisy restaurant", then sound levels at the neighboring residences would exceed 60 dBA with an L<sub>10</sub> measurement (the sound level exceeded 10% of the time).
11. In addition to the steady noise from the restaurant, there are often periodic louder sounds from loud conversations (laughing, very loud talking, etc.) or from events such as things being dropped. Brief sounds from people talking on the stairs can also be very loud. These types of sounds are likely to increase maximum sound levels from the restaurant at the neighboring residences to 65 dBA or higher.
12. The restaurant is in the VCC zone where the nighttime ordinance is an L<sub>10</sub> of 60 dBA and an L<sub>max</sub> of 65 dBA.
13. The adjacent residences are in the VCR zone where the nighttime ordinance (after 10 pm) is an L<sub>10</sub> of 55 dBA and an L<sub>max</sub> of 60 dBA. The applicable limits of

the New Orleans noise ordinance are from the receiving land use, not the use of the sound source.

14. The HVAC equipment is rated at 66 to 69 dBA at 10 ft. The three closest units at grade range from 3 ft to 10 ft from the property line. Although there is a 6-ft wall at the property line, there are also adjacent walls and the underside of the stairs and balcony that will reflect sound over the wall. As a result, the HVAC noise is expected to produce sound levels over 70 dBA at the property line, greatly exceeding the nighttime noise ordinance and possibly exceeding the daytime ordinance.
15. There is line-of-sight from adjacent residences to the rooftop kitchen vent fan and walk-in-cooler condenser. I do not have any specific noise data for these, but it is likely that they will also produce excessive noise at the property line.
16. The restaurant sound levels from the HVAC equipment and from patrons are expected to regularly exceed the residential noise limit of the New Orleans noise ordinance after 10 pm.
17. With a possible standing-room capacity of over 400 people that was testified to at a committee meeting, expected sound levels could be 10 dBA louder due to the number of added patrons plus the expected effect of patrons having to further raise their voices.
18. The adjacent residences at 1026 Esplanade and 1028 Esplanade have backyards that are currently shielded from traffic noise by the buildings between the backyards and the roads, and these quiet backyards and their overlooking windows will be most affected by noise from Café Habana.
19. The proposed establishment would significantly alter the soundscape in the adjacent residential areas, adversely affecting the neighborhood's quaintness and the *toute ensemble* of the Vieux Carre. It would increase foot traffic along N. Rampart and Esplanade. Not only would patrons make sound within the site, they would also make sound from sidewalks while they are on a waiting list for a table. Because of this, the increased noise effect would spill out from the restaurant into the surrounding area.

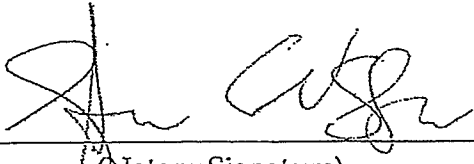
The foregoing facts are known personally to Affiant, Arno S. Bommer.



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ARNO S. BOMMER

Sworn to and subscribed before me,  
This 7th day of January, 2015.



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(Notary Signature)

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(Print Notary name and #)  
Notary Public  
State of Louisiana

Stephen H. Wussow, Notary Public  
and Attorney at Law (LSBA No.35391)  
365 Canal Street, Suite 2850  
New Orleans, Louisiana 70130  
Parish of Orleans, State of Louisiana  
My Commission is for Life.







## Comprehensive Compliance Solutions

9744 Cal Road  
Baton Rouge, LA 70809

January 7, 2015

Mr. Stuart Smith  
One Canal Place  
365 Canal Street, Suite 2850  
New Orleans, Louisiana 70130

Dear Mr. Smith,

I retired from the Department of Environmental Quality (LDEQ) on January 1, 2010 after 25 years of service. My resume is attached. I have reviewed LDEQ documents related to the remediation of property located at 1036-1038 and 1040 Esplanade Avenue in New Orleans, LA. A developer wants to build a restaurant called Café Habana at that location. I have some concerns in that respect. My concerns are as follows:

- 1) the removal of some of the contaminated soil and six steel underground storage tanks that had been buried for more than sixty years is not adequate because a significant amount of hazardous substances remains on the property.
- 2) If the ultimate purpose of air testing is to determine the potential health impact to the public and reduce uncertainty in the assessment, insufficient air testing was done during the closure. Additional testing has to be conducted prior to construction of this restaurant in my opinion.
- 3) The developer is required to notify LDEQ that the intended land use has changed so that LDEQ can re-evaluate the contaminated areas that was of interest in the remediation. (See attached conveyance notice, indicating the property has not been released for non-industrial use.) I have not found any such land use change notification in the public records at LDEQ.

- 4) A groundwater sample should have been taken since RECAP standards were exceeded at a depth of 8 feet, a depth near or below the water table.
- 5) Soil samples should have been taken at the property line since the samples taken on the southern end of Tank 2 and Tank 3 exceeded RECAP standards and were in close proximity to neighboring property.
- 6) Insufficient testing was performed and therefore the possibility that contamination has spread to neighboring properties cannot be eliminated.

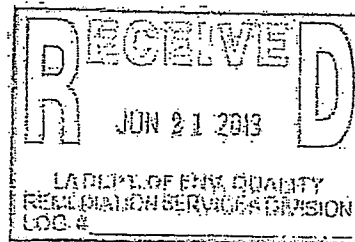
Sincerely,

  
Richard Brackin

Leaaf

June 18, 2013  
Leaaf# WIL-007

Mr. Tom Harris Admin.  
UST and Remediation Division  
LA DEQ  
P.O. Box 4312  
Baton Rouge, LA 70821-4312



RE: Conveyance Notice  
1040 Esplanade Ave  
New Orleans, LA 70116  
(Orleans Parish)  
Facility ID No. 36-019386  
AI No. 184805

Remediation Services Division	
Manager	_____
Team Leader	_____
AIR	_____
TEMPO Risk #	_____
<input type="checkbox"/> Desk Copy File Review	_____

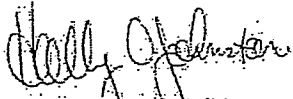
Mr. Harris:

Leaaf Environmental, LLC (Leaaf) is submitting this letter documenting the filing of the Conveyance Notice for the above referenced site.

The Conveyance Notice was filed with Orleans Parish conveyance records on June 12, 2013. The original and one (1) photocopy of the notice are attached for LDEQ records.

If you have any additional questions regarding this matter, please contact Jesse Hoppes or Jim Blazek at (504) 342-2687.

Sincerely,

  
Holly O Johnston  
Bookkeeper

RECEIVED

JUL 10

SOUTHEAST REGIONAL  
OFFICE

Leaaf environmental, llc

www.leaaf.com

812 Rupp Street, Gretna, LA 70053  
New Orleans office: 2828 Burgundy, New Orleans, LA 70117  
Lafayette office: 161 Glynwood Avenue, Lafayette, LA 70506

(504) 342-2687 Fax (504) 342-2715

# **LAPA Hearing Requirements for Adjudication (La. R.S. 49:955)**

- **"§955. Adjudication; notice; hearing; records**

**A. In an adjudication, all parties who do not waive their rights shall be AFFORDED AN OPPORTUNITY FOR HEARING after reasonable notice.**

**B. The notice shall include:**

- (1) A statement of the time, place, and nature of the hearing;**
- (2) A STATEMENT OF THE LEGAL AUTHORITY AND JURISDICTION UNDER WHICH THE HEARING IS TO BE HELD;**
- (3) A REFERENCE TO THE PARTICULAR SECTIONS OF THE STATUTES AND RULES INVOLVED;**
- (4) A short and plain statement of the matters asserted.**

**C. OPPORTUNITY SHALL BE AFFORDED ALL PARTIES TO RESPOND AND PRESENT EVIDENCE ON ALL ISSUES OF FACT INVOLVED AND ARGUMENT ON ALL ISSUES OF LAW AND POLICY INVOLVED and to conduct such cross-examination as may be required for a full and true disclosure of the facts.**

“...in order that the quaint and distinctive character of the Vieux Carre section of the City of New Orleans may not be injuriously affected...”

Act 139 of 1936, Section 22A of Article XIV of the Constitution, as cited in City of New Orleans v. Pergament, 198 La. 852, 856 (La. 1941) and City of New Orleans v. Impastato, 198 La. 206, 208 (La. 1941).

# Page 1, Historic Continuity

- “The overall pattern of streets, lots, buildings, and landmarks was established in the 18<sup>th</sup> Century and followed in the 19<sup>th</sup> and 20<sup>th</sup> centuries. The three centuries of living and building are what have created the “distinctive character” of the Vieux Carre.”

## Pages 2-3, "Toute Ensemble"

- As to the preservation of the 'toute ensemble', "The carefully compiled principles and regulatory details of these guidelines, based on fifty years of experience by the Vieux Carre Commission, are to be taken as valid and tested."

# VCC Design Guidelines: Major Components of Vieux Carre Distinctiveness

- Scale of the District
- Texture of Typical Street Scene (Pattern created by wall openings, shutters, balconies, galleries, ironwork, cornices, etc.)
- Typical Building Site Plan



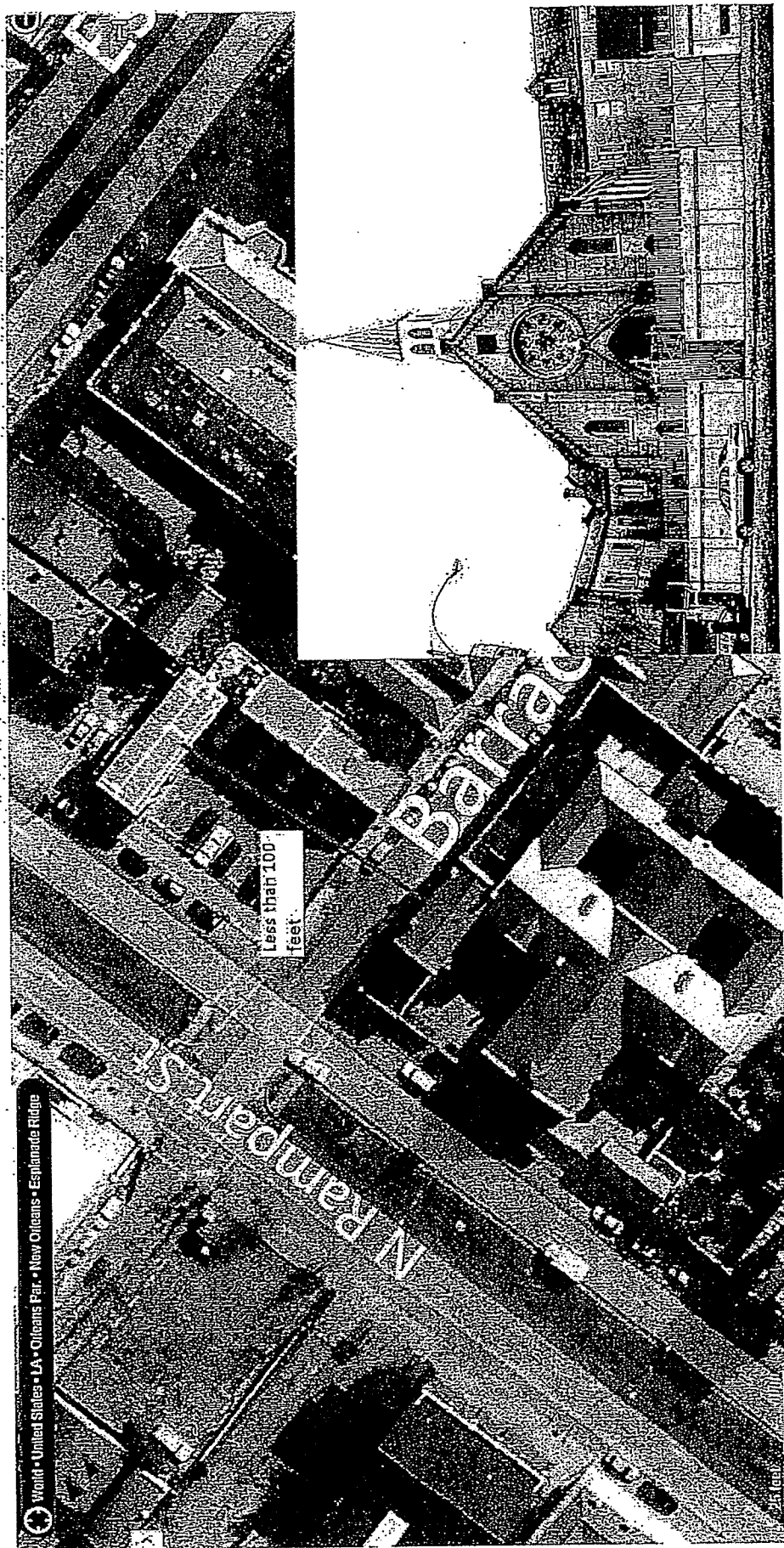
## VIII MECHANICAL, PLUMBING AND ELECTRICAL EQUIPMENT

\* \* \*

**B. Air conditioning and other mechanical equipment should be of the most compact design available and shall be located so as to not detrimentally affect the buildings or its neighbor's visual or sonic environment.**

\* \* \*

-VCC Design Guidelines, 1986, pg. 49

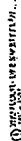


**Sec. 10-236. – Restrictions as to property  
near schools, churches, etc.**

(a) It is hereby declared the sense and policy of this section and section 10-238 that **NO PERMIT SHALL BE GRANTED** for the opening of any barroom, saloon, cabaret or other place **WHERE ALCOHOLIC BEVERAGES ARE SOLD AT RETAIL**, to be consumed on the premises **WITHIN 300 FEET OF ANY** playground, **CHURCH**, public library, or school

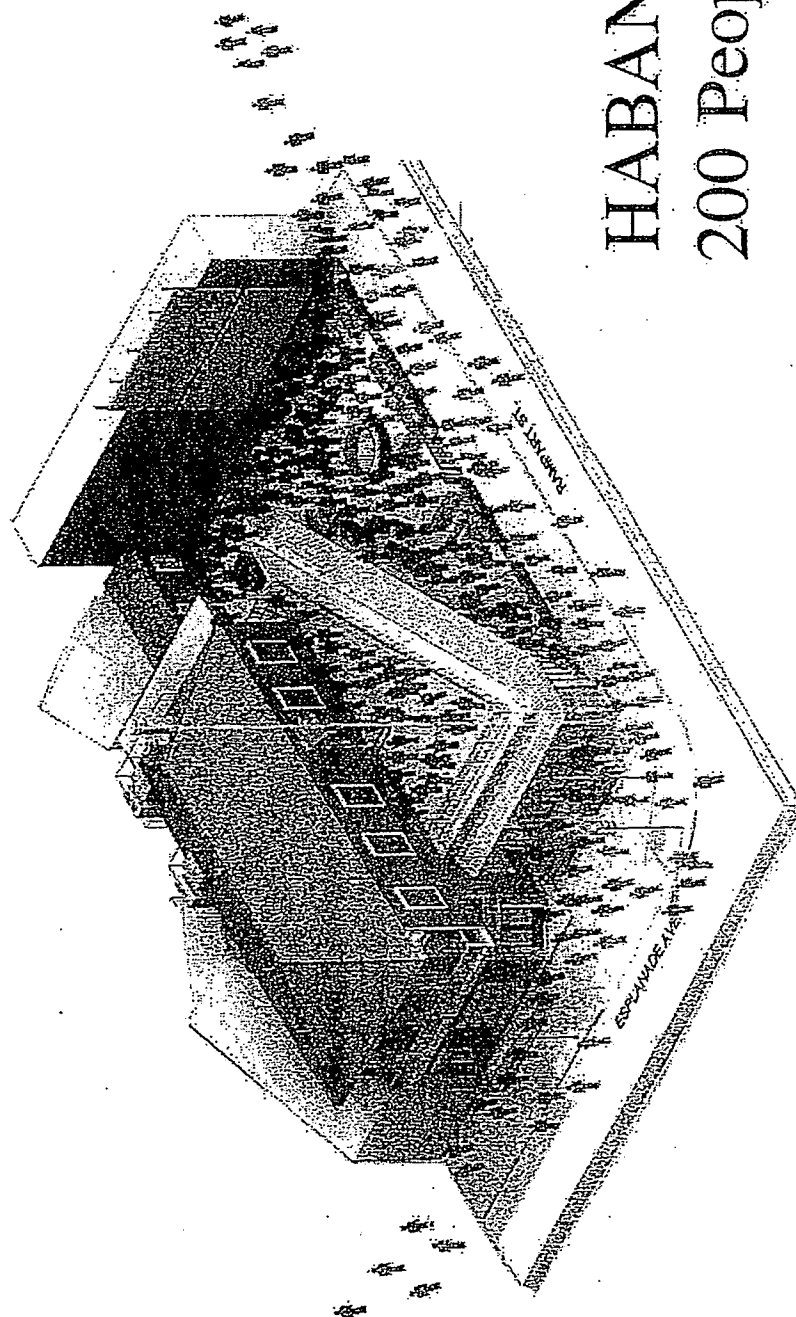
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MILLER

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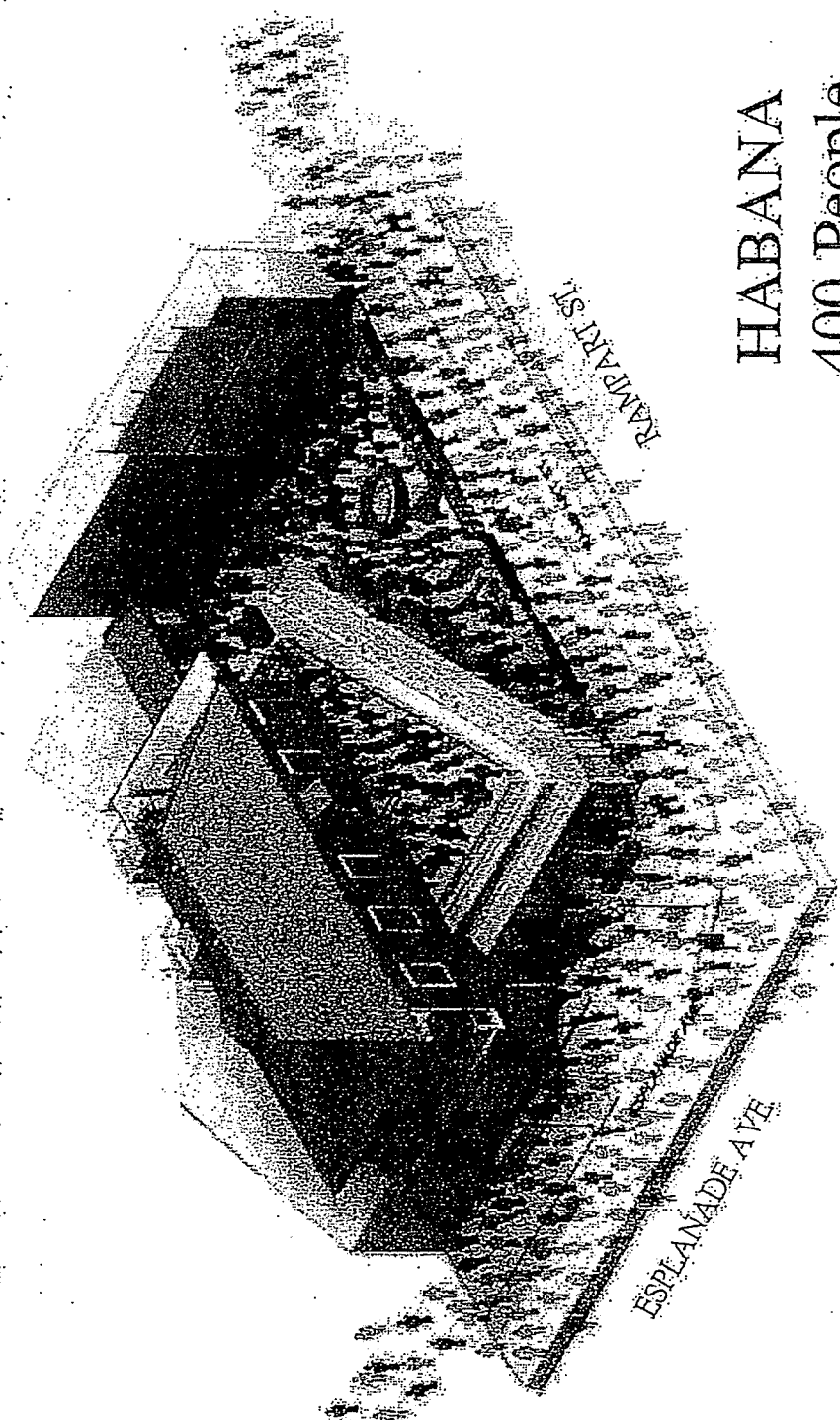
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HEREIN IS UNCLASSIFIED  
DATE 06-11-2001 BY 60322  
UCBAW

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# HABANA

## 200 People

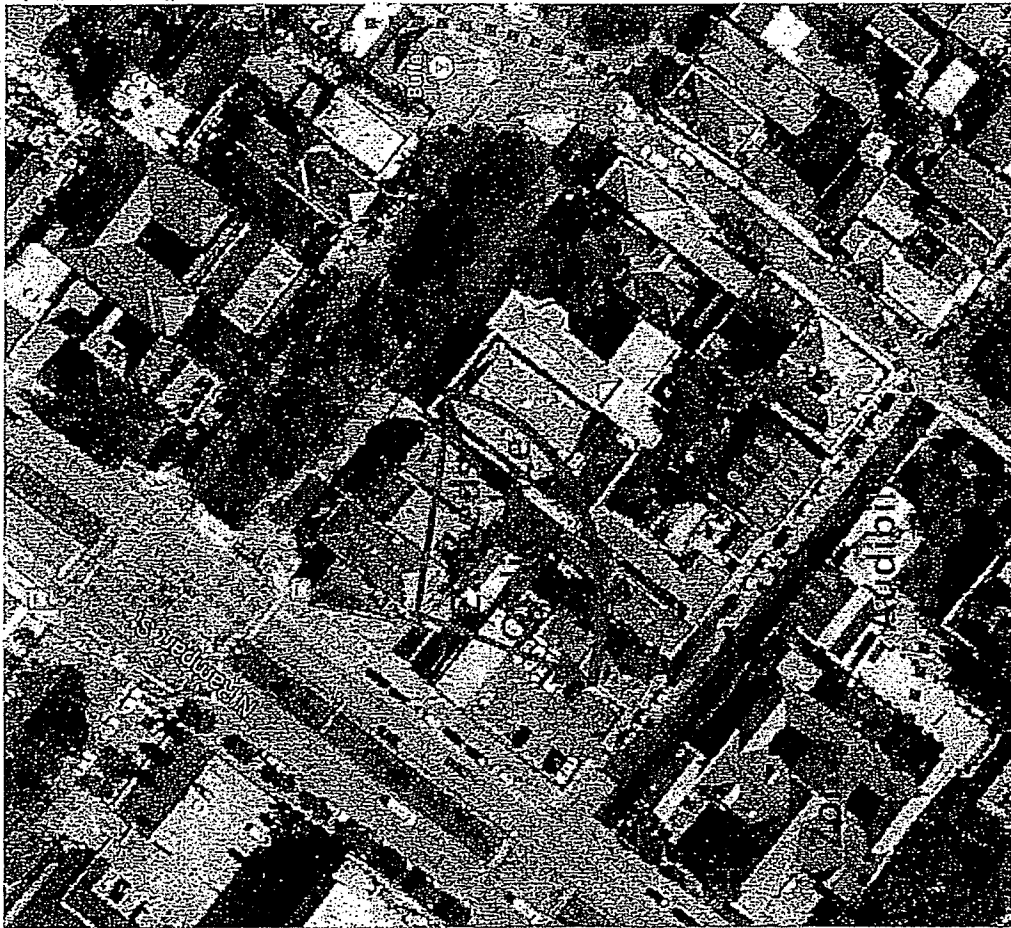


# HABANA

400 People



**BOMMER**



**BRACKIN**

# Organizations Opposed

- Faubourg Marigny Improvement Association
- VCPORA
- French Quarter Citizens
- Louisiana Landmarks Society
- Foundation for Historical Louisiana
- Citizens Action Committee

**Article 8, Section 8.1 and the Design Guidelines require the Commission to review proposed changes in use.**

The Commission and staff ignore the authority requiring review of changes of use:

“Staff would like to affirm that the VCC is not the review entity that approves and permits proposed changes in use; as Article 8, section 8.1 of the Comprehensive Zoning Ordinance explains, the VCC is responsible for reviewing the proposed, physical changes to the building that are necessary in order for the building to function as the proposed, new use.”

-8/26/14 Staff Analysis and Recommendation

# COMPREHENSIVE ZONING ORDINANCE CITY OF NEW ORLEANS

Ordinance 18,555 C.C. S. July 8, 1983, as amended.

## ARTICLE XVII -- Vieux Carré Residential District Regulations

SECTION 1. The regulations set forth in this Article are the district regulations in the Vieux Carré Residential District. (See Article XXVII)

### SECTION 2. The Regulations.

No occupancy permits shall be issued by the Director, Safety and Permits, for any change in the use of any building or building unit and no special permit shall be issued by the Vieux Carré Commission, except that where no change of existing appearance is involved, a special permit by the Vieux Carré Commission shall not be required. There are changes in exterior appearance is contemplated, the Vieux Carré Commission shall hold a hearing, and if it approves the change, it shall issue a special permit to continue the same use, or for any other use not otherwise prohibited in this district, subject to the following conditions and safeguards:

- a. The historic character of the Vieux Carré shall not be injuriously affected.
- b. Signs which are garish or otherwise out of keeping with the character of the Vieux Carré shall not be permitted.
- c. Building designs shall be in harmony with the traditional architectural character of the Vieux Carré.
- d. The value of the Vieux Carré as a place of unique interest and character shall not be impaired.

Subject to a special permit issued by the Vieux Carré Commission for any change in use as hereinafter provided, a building or land shall be used only for the following purposes:

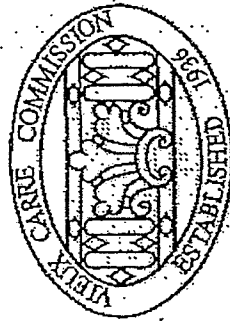
- a. Any use permitted in the C-Pvu Family District.
- b. Multiple-family dwellings.
- c. Apartment hotels.
- d. Tourist homes.
- e. Single detached structures.
- f. Warehouse buildings and uses customarily incidental to any of the above uses.

## Article 8, Section 8.1 provides:

No occupancy permit shall be issued by the Director of Safety and Permits, for any change in the use of any existing building until and unless a special permit shall have been issued by the Vieux Carré Commission, except that where no change of exterior appearance is contemplated such permit by the Vieux Carré Commission shall not be required. Where any change in exterior appearance is contemplated, the Vieux Carré Commission shall hold a hearing, and if it approves such change, it shall issue a special permit to continue the same use, or for any other use not otherwise prohibited in this district, subject to the following conditions and safeguards:

1. The historic character of the Vieux Carré shall not be injuriously affected.
2. Signs which are garish or otherwise out of keeping with the character of the Vieux Carré shall not be permitted.
3. Building designs shall be in harmony with the traditional architectural character of the Vieux Carré.
4. The value of the Vieux Carré as a place of unique interest and character shall not be impaired.

# VIEUX CARRE COMMISSION



## DESIGN GUIDELINES

MARCH 18, 1986

REVISED SEPTEMBER 14, 1996

REPRINTED MAY, 1997

### The Design Guidelines provide:

“The Commission has already acknowledged its authority to disallow uses of property that are detrimental to the Vieux Carre”  
And

“The Vieux Carre Commission is not bound to allow every permitted use to be accommodated in every building.”

-VCC Design Guidelines, 1986,  
pg. 57

**The Vieux Carre Commission finds the Guidelines are necessary, controlling, and a permissible exercise of its authority.**

“As new growth alerted the world to the charms of the Vieux Carre, controls became necessary so that **large scale projects and grand schemes would not erode** the very charms that underlay the Quarter’s popular success.”

-VCC Design Guidelines, 1986, pg. 2

“The carefully compiled principles and regulatory details of these guidelines, **based on fifty years of experience** by the Vieux Carre Commission, **are to be taken as valid and tested.**”

-VCC Design Guidelines, 1986, pg. 57



“The Commission has to consider each design on its own merit as well as its effect on its neighbors and the Vieux Carre as a whole ... by following these guidelines, the property owner is doing his part to help the Commission protect the fragile, irreplaceable environment of this historic district.”

Each proposal's "effect on its neighbors..."  
and effect to the "tout ensemble" is to be  
considered by the Commission

- Affidavit and Testimony of Arno Bommer;
- Statements of neighborhood residents;
- Statement of Anthony Tung;
- The Staff and the Commission itself has noted the detrimental effects of this proposal.

## Detrimental Effects noted by Staff and Commission

- The Staff of the Vieux Carre Commission has already noted that this design erodes the historic character of the area, by noting that it "is curious to know why the . . . residential unit [is] being maintained in an environment that would not be conducive to peaceful living."

-3/12/13 Staff Analysis, adopted herein by reference.

- 9/23/14 Staff Analysis:

"installation of the vents on the river-side slope is unsuitable due to the effects on neighboring properties."

- 10/1/14 Staff Analysis:

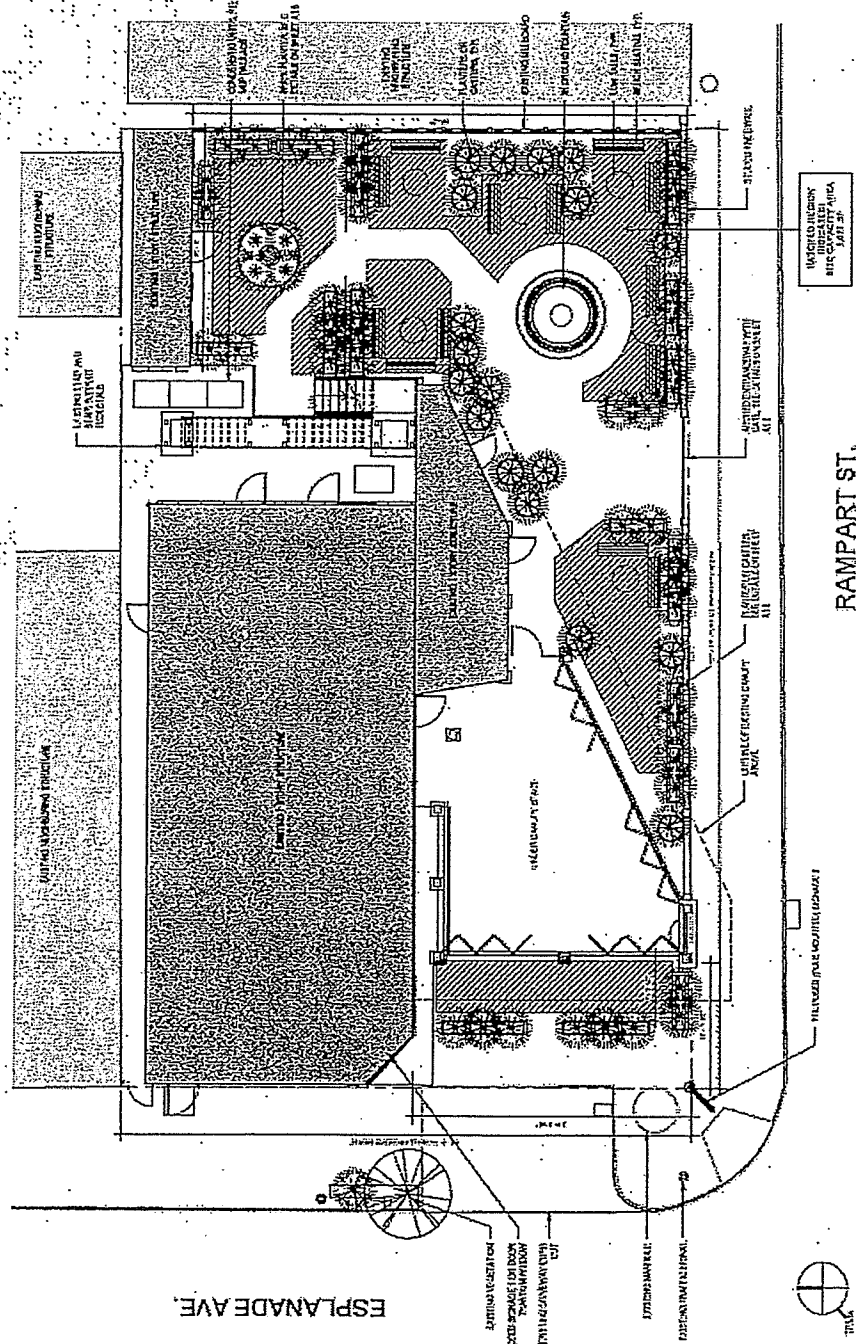
"The proposal presents questions regarding the addition of noise and traffic to the corner."

- 10/14/14 Staff Analysis:

"staff already has concern that the use of the canopy top as an occupy-able space **"change(s) the defining characteristic of the building and its site and environment."** . . . The Committee should be very thoughtful when considering the proposed use for the canopy, considering it is the defining feature of that structure.

"staff contends that exhaust stacks are better placed on the river-side roof slope . . . but is concerned about the effect on neighboring properties."

The application, as proposed, will violate the Comprehensive Zoning Ordinance Open Space Requirements.



“A minimum of 30% open space for interior sites and 20% for corner sites shall be maintained”.

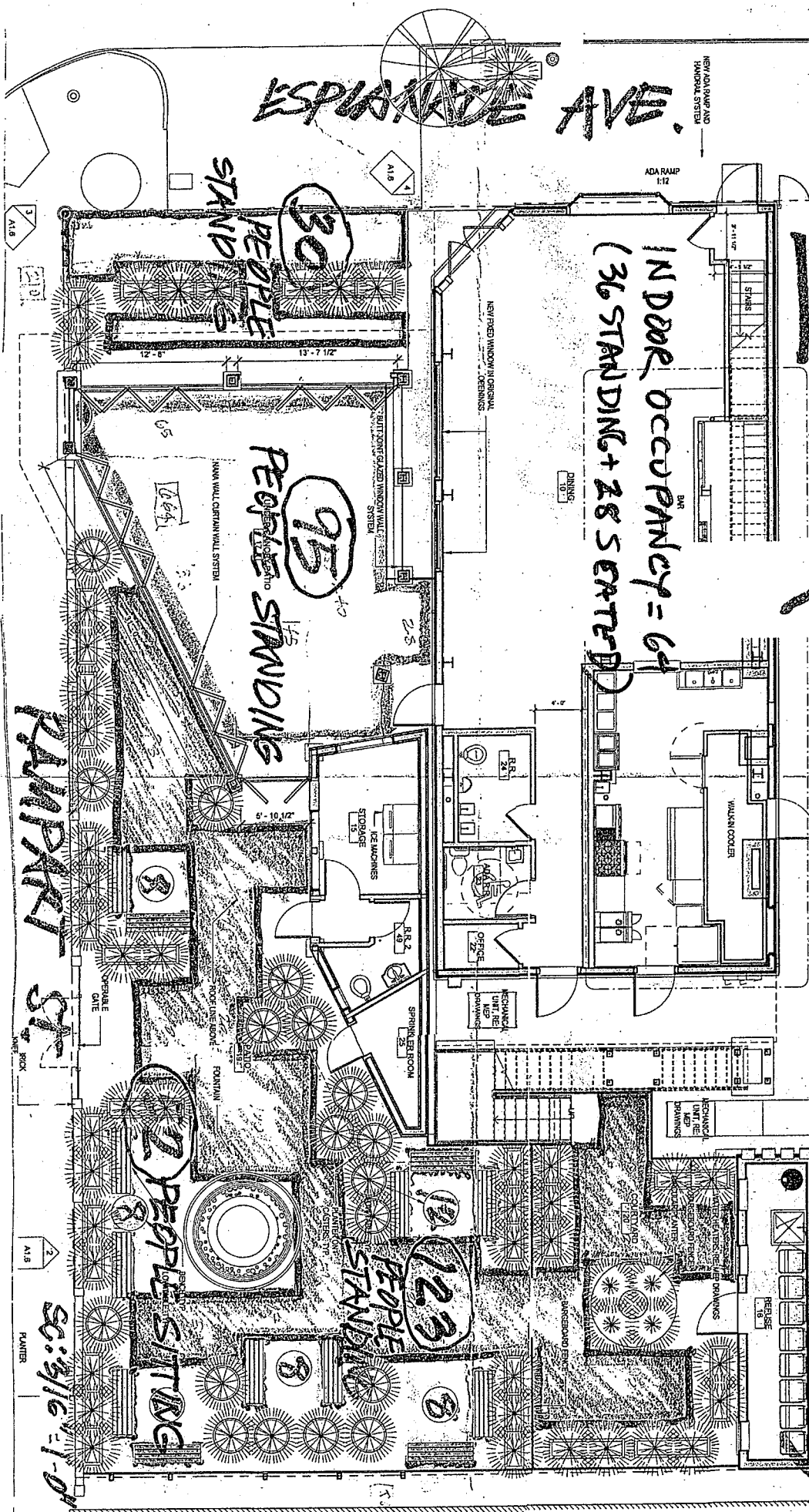
# SUMMARY

- 1) The Design Guidelines have been completely ignored in evaluating this proposal;
- 2) Open Space requirements will not be met;
- 3) The Commission and its Staff have acknowledged that the proposal will have detrimental effects to the historic character of the neighborhood and the "*tout ensemble*".

## **Vieux Carre Commission Design Guidelines**

- No citation to nor mention of the design guidelines throughout the entirety of this application.
- Any approval given to the application, given the Staff and Commission's choice to ignore its own Design Guidelines suggest that the decision will be found to be arbitrary and capricious.

248 STAIRS + 52 STAIRS



**NO HABANA!**



**Index to NO HABANA!**

Tab	Date	Description
1	01/07/2015	Anthony M. Tung Expert Report
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2	01/07/2015	Robert L. Miller Expert Report
A		Robert L. Miller Curriculum Vitae
B		Habana with 200 People
C		Habana with 400 People
3	01/07/2015	Arno S. Boomer Affidavit
A		Arno S. Boomer Curriculum Vitae
B		Noise Impact Aerial
4	01/07/2015	Richard Brackin Expert Report
A		Richard Brackin Curriculum Vitae
5	01/07/2015	Original PowerPoint Presented at VCC Meeting
6	12/19/2014	Café Habana Plans
7		Map Showing Application Illegality



**Anthony Tung**

**PRESERVATION EXPERT**

**Anthony M. Tung**  
**36 Cooper Square 5R**  
**New York, NY 10003**  
**212-533-3124**  
**anthonym.tung@verizon.net**

7 January 2015

Honorable Nicholas S. Musso, A.I.A.  
Chairman  
Vieux Carré Commission  
The City of New Orleans, LA

TESTIMONY IN REGARD TO 1036 ESPLANADE AND 1040 ESPLANADE

Dear Chairman Musso and Honorable Members of the Commission,

My name is Anthony Tung. I am a former member of the New York City Landmarks Preservation Commission (from 1979 to 1988) and a professor on international urban preservation at MIT (2006) and Columbia University (2012); and the author of *Preserving the World's Great Cities: The Destruction and Renewal of the Historic Metropolis*.

I offer this testimony in no one's employ and at my own expense as a friend of the Vieux Carré, one of the singular historic townscapes in the United States.

The matter before you, a proposal to renovate two properties and to adapt all, and or parts, of these existing structures for use as a restaurant has the potential to profoundly impair the unique character of the Vieux Carré by threatening its long-term viability as a place for people to live.

In making this assessment I am informed by my professional involvement in several suits brought by Smith Stagg, L.L.C., on behalf of Peter Yokum, a home owner in the Vieux Carré who is suffering from unregulated and (I believe) illegal violations of the city's noise ordinance due to excessive sound levels from nearby restaurants and bars.

Thus, having walked the Vieux Carré numerous times in the past as a visiting lecturer and having recently examined the quarter in the company of leading experts on nuisance noise, I am aware of the debilitating impact of unchecked restaurant, bar, and club noise on the residential quality of life.

The extreme sound levels on Bourbon Street are shocking and pertain directly to the matter before you. Given that the eastern portion of the French Quarter remains a generally quiet place of residential occupancy, and that the eastern boundary of the Vieux Carré (Esplanade Avenue), is remarkably idyllic: allowing an open-air restaurant at 1036 Esplanade and 1040 Esplanade courts the demise of residential habitation. As on Bourbon Street, heightened ambient noise from the proposed open-air restaurant can lead to a violent escalation of clamor, making nearby residential occupancy a nightmare.

Like in Venice, Bruges, and other historic cities in Europe and North America, a negative syndrome of decline can follow as, one by one in a domino effect, various residential occupants are driven out. This 'Venice-like' syndrome is already activated in the Vieux Carré where, in recent decades, residential population has dwindled, tourism services have mushroomed, and residential services have shrunk. (See attached note for details.)

Thereby, I believe the current proposal warrants your closest scrutiny.

In terms of its architectural features:

1. The impact of excessive noise can not be controlled if the restaurant function remains unenclosed behind walls—because regardless of the intent or assurances of the new property owner, once an open-air facility is approved, it will be extremely difficult to police noise pollution should a less sensitive occupant ever gain possession. This would constitute a permanent on-going injury to the district's well-being. It is a grossly inappropriate change of use.
2. Preservation of the strikingly handsome historic residential character of Esplanade Avenue will be injuriously affected as the restaurant's open-air commercial presence intrudes on its quiet domestic character.
3. The street facades and massing of the proposed structure constitute an alien building type in the historic urban landscape. Its forms are more consistent with a Post-war suburban commercial strip than with the "quaint and distinctive" character of the "toute ensemble" of the Spanish Colonial/French Colonial/American-Creole-Antebellum entrepôt. It is grossly inappropriate in terms of architectural form.
4. Finally, given the Vieux Carre Commission's long history of requiring new infill architecture consistent with a French Quarter Style—with traditional-looking structures that complete existing street-walls—approval of the current proposal raises a fundamental regulatory question: **Is the commission now abandoning a decades-old and highly effective policy?** —a policy which has made the Vieux Carre one of the most beloved and beautiful historic districts in America.

Sincerely,  
Anthony M. Tung

Notes: As per Tourism Gentrification: The Case of New Orleans' Vieux Carre by Kevin Fox Gotham in *Urban Studies Magazine*, Vol. 42, No. 7, June 2005:

- Between 1940 and 1970 the population of the Vieux Carre plummeted from 11,053 to 4,176, a loss of more than 50-percent, even as the population of the city as whole increased by 30-percent.
- From 1950 to 1999, the number of souvenir and t-shirt shops increased from 26 to 110; retail apparel stores increased from 14 to 42; music clubs increased from 7 to 27; hotels increased from 21 to 40; and art galleries increased from 10 to 40.
- From 1950 to 1999, the number of groceries decreased from 44 to 4; miscellaneous food stores declined from 44 to 19; hardware stores from 31 to 1; laundry services from 24 to 2.



**Anthony M. Tung**  
36 Cooper Square, 5R  
New York, New York 10003  
tel and fax: 212 533-3124  
email: anthonym.tung@verizon.net

## RESUME

*author:* **Preserving the World's Great Cities:**

**The Destruction and Renewal of the Historic Metropolis**

Hardcover: Clarkson Potter/Random House, New York, 2001

Paperback: Three Rivers Press/Random House, New York, 2002

Japanese language edition: Kaiji Shobol Publishers, Kyoto, 2006

**nominations:**

National Book Awards/Non-Fiction, nominated by Random House USA, 2002

PEN/Architectural Digest Award, nominated by Random House USA, 2002

**reviews:**

- Publishers Weekly, July 16, 2001:  
"This is an important contribution not only to the literature of urban studies and city planning, but to architectural history and sociology."
- The San Francisco Chronicle, October 14, 2001
- Business Week, October 22, 2001:  
"Masterly . . . This far-reaching book weaves well-told tales of urban destruction and renewal, using preservation and planning as the prism through which history is viewed."
- The Atlanta Journal Constitution, November 4, 2001:  
"A remarkable chronicle of human spirit and architectural heritage."
- The Charleston Post and Courier, November 11, 2001
- The Washington Post, November 25, 2001:  
"A landmark of creative urbanism . . . Tung's breadth of vision and rapid-fire insights recall Lewis Mumford at his best."
- The Minneapolis Star Tribune, December 23, 2001:  
"Beautiful and compelling . . . Tung has an acute appreciation of the value and fragility of cities."
- The Toronto Globe and Mail, January 9, 2002
- The Charlotte Observer, February 18, 2002:  
"This book fits in seamlessly with published works by other scholars of urban culture and history, most notably historian Lewis Mumford."
- Architectural Record Online, April 2, 2002:  
"It is an epic, or rather, 18 little epics packed into one important book."
- Rocznik Warszawski, quarterly architectural journal, Warsaw, Poland, 2004

*education:* The Cooper Union, NYC, Professional Degree in Architecture, 1972  
five-year course of study

**awards and honors:**

Prize: Fourth-Year Architectural Design, 1971

President's Award, Distinguished Alumni Citation, 1987

Alumni Representative, Board of Trustees, 1996 to 2000

*historic preservation* **appointments:**

*and civic affairs:* • Commissioner

New York City Landmarks Preservation Commission, 1979 to 1988

Mayor Edward I. Koch

—evaluated for designation 200 landmarks and 12 historic districts composed of 3,500 properties

—reviewed 2,600 proposals constituting more than \$ 3 billion of new construction associated with protected historic buildings and districts

• Member

---

Transition Team for Mayor David N. Dinkins, 1990

—interviewed and recommended nominees for the heads of 9 municipal agencies

awards and honors:

The Village Voice, "New York's Finest," 1988

Asian American Legal Defense and Education Fund, "Justice in Action Award," 1988

lectures on the preservation of New York City:

- Cornell University, Doctoral Program in Historic Preservation, Ithaca, NY, 1989
- Yildiz Teknik Universitesi, Department of Architecture, Istanbul, Turkey, 1995
- Municipal Department 19, Division for Planning, Vienna, Austria, 1995
- Technical University of Athens, School of Architecture, Greece, 1995
- Kyoto University, Graduate School of Historic Preservation, Japan, 1995
- Singapore Urban Development Authority, Singapore, 1995

lectures on international urban preservation:

- The Committee to Save the City, Charleston, S.C., 1997
- Goethe Institute of Mexico, international colloquium, Mexico City, 1998
- The Municipal Art Society, New York, 2001
- The National Building Museum, Washington, D.C., 2002
- The New School for Social Research, New York, 2002
- The School of Architecture, University of Toronto, Ontario, Canada, 2002
- The Ontario New Democratic Party, policy conference, London, Canada, 2002
- United States-Spain joint forum on urban development, Madrid, Spain, 2003
- Annual Preservation Forum, key-note, Saratoga Springs, N.Y., 2003
- Columbia University Historic Preservation Program, New York, 2003
- State of New Jersey Conference on Urban Preservation, key-note, Trenton, N.J., 2003
- Los Angeles Conservancy, colloquium keynote, Los Angeles, 2003
- The Getty Conservation Institute, Los Angeles, 2003
- Williams College, Williams, Massachusetts, 2004
- Harvard University, MIT-Harvard Symposium on Urbanization in China, Cambridge, 2004
- Ontario Provincial Conference on Urban Conservation, keynote, Hamilton, 2004
- Institute of Classical Architecture & Classical America, conference keynote, New York, 2004
- Heritage Canada Foundation Annual Conference, keynote, Saint John, NB, 2004
- Carmichael Lecture on Urbanism, Halifax, Nova Scotia, 2005
- Florida Trust Annual Statewide Conference, keynote, Coral Gables, 2005
- University of Miami School of Architecture, Coral Gables, 2005
- National Association of Housing, Enclave on Urban Envisioning, keynote, Charleston, SC, 2006
- Morrison Lecture on Urbanism, New Orleans, LA, 2006
- Stadsherstel Amsterdam, Colloquium on Preservation and Housing, keynote, Netherlands, 2006
- State Historic Preservation Office, San Juan, Puerto Rico, 2006
- City of Toronto, heritage planning workshop, Ontario, 2006
- Stadsherstel Amsterdam, Colloquium on Preservation, keynote, Netherlands, 2006
- Colorado Preservation Inc. State Conference, keynote and workshop, Denver 2007
- City of Halifax Department of Planning, heritage planning workshop, Nova Scotia, 2007
- University of Michigan, School of Architecture and Planning, Ann Arbor, 2007
- Preservation Foundation of Palm Beach, Florida, 2007
- Louisiana Landmarks Society, Martha Robinson Lecture, New Orleans, 2007
- University of Cambridge, City Seminar Lecture, Great Britain, 2007
- University of Cambridge, Master Class, Great Britain 2007
- National Trust for Historic Preservation Annual Conference, Closing Plenary, Tulsa, 2008



radio:

WNYC, AM New York: "New York and Company with Leonard Lope," 2001  
 WBAI, FM New York: "Behind the News with Matthew Finch," 2001  
 National Public Radio, "Public Interest with Kojo Nnamdi," 2002  
 WNYC, AM New York: "New York and Company with Leonard Lope," 2004  
 Canadian Broadcast Company, "Maritime Noon with Costas Halavrezos," 2004  
 Canadian Broadcast Company, "Maritime Noon with Costas Halavrezos," 2005

teaching:

The Metropolitan Museum of Art, NYC, lectures on world architectural history, 1987-93  
 The New School, Graduate School of Urban Professions, NYC, course on preservation in New York, 1989  
 Columbia University, Historic Preservation Masters Program, thesis advisor, 2004  
 MIT School of Architecture and Planning, graduate course: Preserving the World's Great Cities, 2006

writing on urban affairs in periodicals:

Tung's writing on urban conservation issues has appeared in the *New York Times*, *New York Newsday*,  
*The Toronto Globe and Mail*, *The Charleston Post and Courier*, and *Architectural Record On-Line*.  
 Currently, he is a contributing editor to *ICON Magazine*: a quarterly publication of the World Monuments  
 Fund.

children's art education  
 and non-profit  
 institutional  
 administration

Director and Founder  
 Young People's Art, NYC, 1973 to 1980  
 —alternative arts education programming for New York City public schools  
 client institutions:  
 Metropolitan Museum of Art  
 Jewish Museum  
 Staten Island Museum  
 Staten Island Children's Museum  
 New York State Council on the Arts  
 New York University Graduate School for Cultural Institution Management  
 Children's Television Workshop, "The Electric Company"  
 Children's Television Workshop, "Sesame Street"

consulting and design:

Since 1973, Mr. Tung has maintained a private professional practice as a designer in such varied  
 disciplines as architectural master planning, museum exhibition design, industrial exhibition design,  
 industrial product design, graphic design, book design . . . completing over 200 contracts over 30 years.

Tony Tung was born on June 27, 1947 in Lansing, Michigan, and lives in downtown Manhattan with his  
 wife, Janet Vicario, a painter and book designer. His father, George K.L. Tung, a former research  
 chemist, was born in Shanghai, China. His mother, Rosemary Jones Tung, is the author of *A Portrait of  
 Lost Tibet* (Thames and Hudson Ltd., London, 1980).



**Robert L. Miller**

FIRE CODE EXPERT



## ROBERT L MILLER

A R C H I T E C T  
1491 West Highway 98  
Mary Esther, Florida 32569  
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850-581-0295 - FAX  
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BUILDING CODES CONSULTANT  
CONTINUING EDUCATION SEMINARS  
PROFESSIONAL WITNESS  
ARCHITECTURAL SERVICES

January 7, 2015

**RE: Café Habana - Proposed Design Documents for VCC Submittal**

1040 ESPLANADE AVE / 1324 NORTH RAMPART,  
1036-1038 ESPLANADE AVE  
NEW ORLEANS, LA 70116

By: Rozas - Ward Architects & Palmisano Contractors

This review is at the request of concerned property owners adjacent to and in the vicinity of the proposed project. Use of this review is restricted to purposes of such persons.

The documents provided to the State Fire Marshal for "PRELIMINARY REVIEW" (see Fire Marshal review P0457374 dated October 29, 2014) were not dimensioned to allow for the plan reviewer to determine accurate occupant load calculations. Those documents indicated both first and second floor were intended for assembly use. Each floor had a kitchen to serve the dining on the respective floor. Square footage was indicated for only a portion of the areas of each floor which was assumed by the Fire Marshal reviewer for occupant load calculation. Due to the insufficient information being provided, the reviewer was unable to calculate correct occupant loads.

The documents presented for review now indicate a mixed occupancy of Assembly (Group A-2), to be used as a dining facility, and Residential (Group R-1 or possibly R-2). The plans indicate the intent to provide sprinkler protection which is required for both occupancy classifications. There does not appear to be any fire resistant rated separation indicated so the assumption would be that the project is being proposed as "non-separated" occupancy classification and compliance with IBC Section 508.3 would be required. In those circumstances, the entire facility must be protected in accordance with the most restrictive requirements of the occupancies.

Though this is a renovation of an existing facility, due to the extent of renovation construction, change of use, and reconfiguration of space, it is required to comply with Codes and Standards for new construction. The primary Codes enforced for new construction are the currently adopted Life safety Code (**NFPA 101 - 2012**) and the International Building Code (**IBC - 2012**) in addition to Orleans Parish and City of New Orleans ordinances and the additional Standards referenced by those Codes.

Upon review of the current revised documents under consideration for this project, the following issues are observed and deemed appropriate for comment:

1. The first floor of 1036 Esplanade was originally occupied as mercantile occupancy classification. That space has now been defined as what appears to be dining facilities and attached commercial kitchen defined in the IBC as occupancy Group A-2. For purpose of understanding, Group A-2 is defined as:

*Assembly uses intended for food and/or drink consumption including, but not limited to:*

- a. Banquet halls
  - b. Casinos (gaming areas)
  - c. Nightclubs
  - d. Restaurants, cafeterias and similar dining facilities (including associated commercial kitchens)
  - e. Taverns and bars
2. The commercial kitchen exhaust at the roof appears to be within 20 feet of the open patio of the adjacent residence. While not necessarily a Code issue, the grease laden aromatic vapors produce by the volume of cooking at this facility would prove objectionable which was noted in prior VCC comments.

3. Occupant load calculations in the submitted plans do not appear to be as defined by the various Codes and Standards enforced by the Louisiana State Fire Marshal or the City of New Orleans. Those methods are documented as follows:
  - a. Demarcation of a "path of egress" within assembly areas intended for use as dining facilities so as to exclude those paths from areas used to calculate the occupant load is not found in either the NFPA 101 or the IBC in dining rooms. The result provides for an artificially reduced occupant load.
  - b. The occupant load (number of occupants in a space) of a dining area is calculated at 15 square feet per occupant based on the entire area to be occupied with the exception of fixed obstructions such as cabinetry or appliances used for service or structural members. Alternatively, fixed seating can be used and counted as such. No fixed seating was indicated, only an area designated for such.
  - c. Calculation of occupant load based on 15 square feet per occupant at the first floor interior dining areas indicated on the plans appears to be at least 60 as the area in question appears to enclose approximately 907 square feet excluding corridors and the bar. The plans indicate an occupant load of 57 without specifically showing the individual "fixed seating."
  - d. In addition, the exterior Dining under the canopy and the courtyard area having the same occupancy use must have the occupant load calculated at 15 square feet per occupant in accordance with the adopted codes.
4. This interior dining is proposed to egress through the area labeled "EXTERIOR PATIO". Again, the "egress path" demarcation falsely reduces the actual occupiable area to project an occupant load less than the appropriate calculations would provide. The Codes do not provide for reduction of occupant load due to egress paths which are properly included in the area used in the calculations.
5. A means of egress is proposed through an alleyway between this project and the adjacent residence. That alleyway has been measured at 32 inches maximum with reduction at the gate point by utility meters and electrical panel. That route is just to the left of a door indicated as an ADA Accessible door. The indicated route of egress to the public way from that door is through this alleyway thus designating the alley as an accessible route. Investigation of the 2010 ADA/ABA adopted for review by the State Fire Marshal does not indicate that the width is sufficient for accessible egress. The minimum egress width would require not less than 44" in accordance with the NFPA 101 and IBC and additionally would require fire resistance rated corridor protection which is not indicated. Attached photographs indicate the existing electrical panel and other meters protrude into the egress width up to 10" into the clear width in an accessible route. In accordance with the 2010 ADA Standard Section 307.2, protrusion is limited between 27 and 80 inches above the floor of an accessible route to 4" into an accessible route which further precludes this alley from use as an egress route.
6. Additional route protection includes the following issues observed:
  - a. **Rated corridor protection** (minimum one hour is required but neither property appears to have those exterior bearing walls rated in accordance with IBC Table 601).
  - b. **Level route** (that alleyway is not paved as required by accessibility codes and standards)
  - c. **Clear width** (the gate at the Esplanade Avenue sidewalk exit from the alleyway is of the required 32 inches minimum measured with the gate opened 90 degrees)
7. The proposed dining at the second level on top of the existing filling station canopy has similar Code misinterpretations. The area there, though shown as reduced by low partitions to provide for a smaller occupant load, has the same "path of egress" demarcated so as to eliminate that path from the calculable area. The drawings indicate a calculated occupant load based on concentrated occupant load at 7 square feet per occupant and indicates a load of 77 occupants. Additional

notations indicate that somehow, the State Fire Marshal will condescend to reduce that area to an allowable 49 occupants thus permitting a single means of egress from that canopy.

The Codes in fact require the "calculated" occupant load be the minimum and do permit that load to be exceeded only if egress facilities and life safety protection are provided for the increased occupant load.

8. Further, regarding the seating on top of filling station canopy, the apparent area involved is 782 square feet which at 7 square feet per occupant is **112** occupants. The apparent intention with the proposed seating indicated at 7 square feet per occupant is that the space on top of the filling station canopy is to be used for **concentrated** load use such as found on a dance floor or other party type use similar to what is observed during Mardi Gras and other festivals in New Orleans. Due to the occupant load on the canopy exceeding 49, two means of egress are required by both the NFPA 101 and IBC from the filling station canopy but only a single means of egress is provided in these drawings.
9. Additional occupancy calculations are questionable at the ground floor where the only "occupied" dining area is indicated as partially under the filling station canopy. The Codes require all occupiable space in assembly occupancies to be accounted for. The entire space designated as "CATERING COURTYARD" and "EXTERIOR PATIO" is occupiable and while planters and other devices are indicated on the drawings, precise delineation of the occupiable space is not indicated. The **NFPA 101** in **Table 7.3.1.2** for **Occupant Load Factors** requires assembly use areas of "**Less concentrated use, without fixed seating**" to use 15 square feet for the net square footage of the area. Additional information is required to determine the precise occupant load allowed. The area in question appears to have a scaled square footage of 3,085 which when divided by 15 produces a calculate occupant load at the outdoor dining and patio of **206** occupants.
10. The total calculated occupant load of the ground floor dining and courtyard areas appear to be **272** in addition to the facility's upper floor of **112** for assembly in addition to the load of the residential occupancy. The apparent total occupant load then would be **384** subject to accurate dimensions and specific use being provided in future final construction drawings required for review.
11. Structurally, the existing filling station canopy, being a roof provided for weather protection, was not intended for human occupancy. If built under current Codes that canopy would have in addition to the loads imposed by the structure itself a required live load of 20 pounds per square foot which is sufficient for typical loads imposed by weather. However, the required design live load for assembly occupancy as proposed is **100 pounds per square foot** [see *IBC Table 1607.1*]. This required load is **500 percent greater** than the design capacity requirements of a filling station canopy. There is no evidence of increased structural support for that required load. If preservation of this existing facility is of concern, then any structural modifications should meet the local ordinances for preservation.

Though the drawings available for review are incomplete without any precise dimensions, I was able to transform them into drawings from which all dimensions and areas noted above were garnered. In my opinion, no further permissions should be granted without full submittal to the State and Local authorities and receipt of documents indicating compliance with the Codes and Standards and accessibility requirements for mobility impaired persons.

Should any questions arise regarding any of the comments above, please feel free to contact me.

Sincerely;



Robert Miller - Architect

Photographs of alley:



Photo showing building electrical panels and utility meters protruding into alley



Alley from public sidewalk showing the gate and unlevelled ground surface  
Also shows plumbing drain cleanout and hose-bibb protrusion into alley





Utility panel box protruding into ally between gate and public sidewalk  
Note the non-level walking surface between the gate and public sidewalk





## ROBERT L MILLER

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Mary Esther, Florida 32569  
850-581-2174 - Phone  
850-581-0295 - FAX  
RLM@RLMarch.com

BUILDING CODES CONSULTANT  
CONTINUING EDUCATION SEMINARS  
PROFESSIONAL WITNESS  
ARCHITECTURAL SERVICES

### Curriculum Vitae - April 5, 2013

Robert Miller has been engaged in one fashion or another in the construction industry since the late 1960's. Miller is a native of Lake Charles, Louisiana, and was raised in the construction industry in the Miller family businesses of architecture and general contracting.

**Licensed Architect** - State Board of Architectural Examiners in Louisiana – 1979 to present

**Education** - Attended Louisiana State University and University of Southwest Louisiana school of architecture.

**Retired** – from Louisiana State Fire Marshal after 13 years in November 2006 where he served as a senior Staff Architect reviewing construction documents for Code compliance.

**Code Instructor and Consultant** - since 2001 while serving at the Fire Marshal's office where he taught application of the codes and standards enforced by Louisiana for Architects and Engineers at Engineering Society and AIA sponsored seminars and for State Fire Marshal and municipal Fire Prevention District building inspectors.

Miller has more than 40 years experience in the construction industry including general contractor, architectural specialty contractor, architectural practice, and building code official.

In November of 2006, Miller founded a consulting firm, The Building Code Institute, LLC, providing continuing education seminars and a code consulting practice for firms in several States including Louisiana, Indiana, Mississippi, Oklahoma, Arkansas, Tennessee, New Jersey, and North Carolina.

The seminars provided by The Building Code Institute are designed to communicate the correlation between the codes and the design process that provides the participant with a better understanding of the Codes used in the Design process. The seminars include life safety issues such as fire resistive construction, firestopping, egress, handicap accessibility, slip and fall prevention, and fire protections systems such as fire alarms and sprinkler systems.

Miller's architectural consulting practice includes review of design documents during the design development phase through to construction documents and assisting owners, architects, and developers with plan submittal for permitting at the State and local level. These services are in addition to performing design services as the professional of record. Professional witness services regarding Code compliance is also available.

Miller is a Professional member of the **International Code Council** and the **National Fire Protection Association** and maintains current documents and membership in those organizations.

Miller has provided code consultation on many projects across Louisiana including but not limited to:

- Julia Street Cruise Line Terminal – New Orleans - Egress and Life Safety design consultation
- Benson Towers (home of the State Office Building in New Orleans)
- Village de Jardin apartment/dwelling complex and Congregate Living Facility – New Orleans
- Canterbury House Apartment complexes in New Orleans, Baton Rouge, Slidell, and Lafayette and in various location in Indiana and Illinois
- Design Architect for RE/MAX First Office Building – Baton Rouge
- Design Architect for renovations to First Methodist Church - Fort Walton Beach, FL
- Design Architect and General Contractor for J. W. Barrois – Dental Office, Lafayette, LA
- Barronne Street high rise apartment building renovations – New Orleans
- Rapides Parish Coliseum Renovations and Additions - Alexandria, LA - Code Consultant



## The Building Code Institute LLC

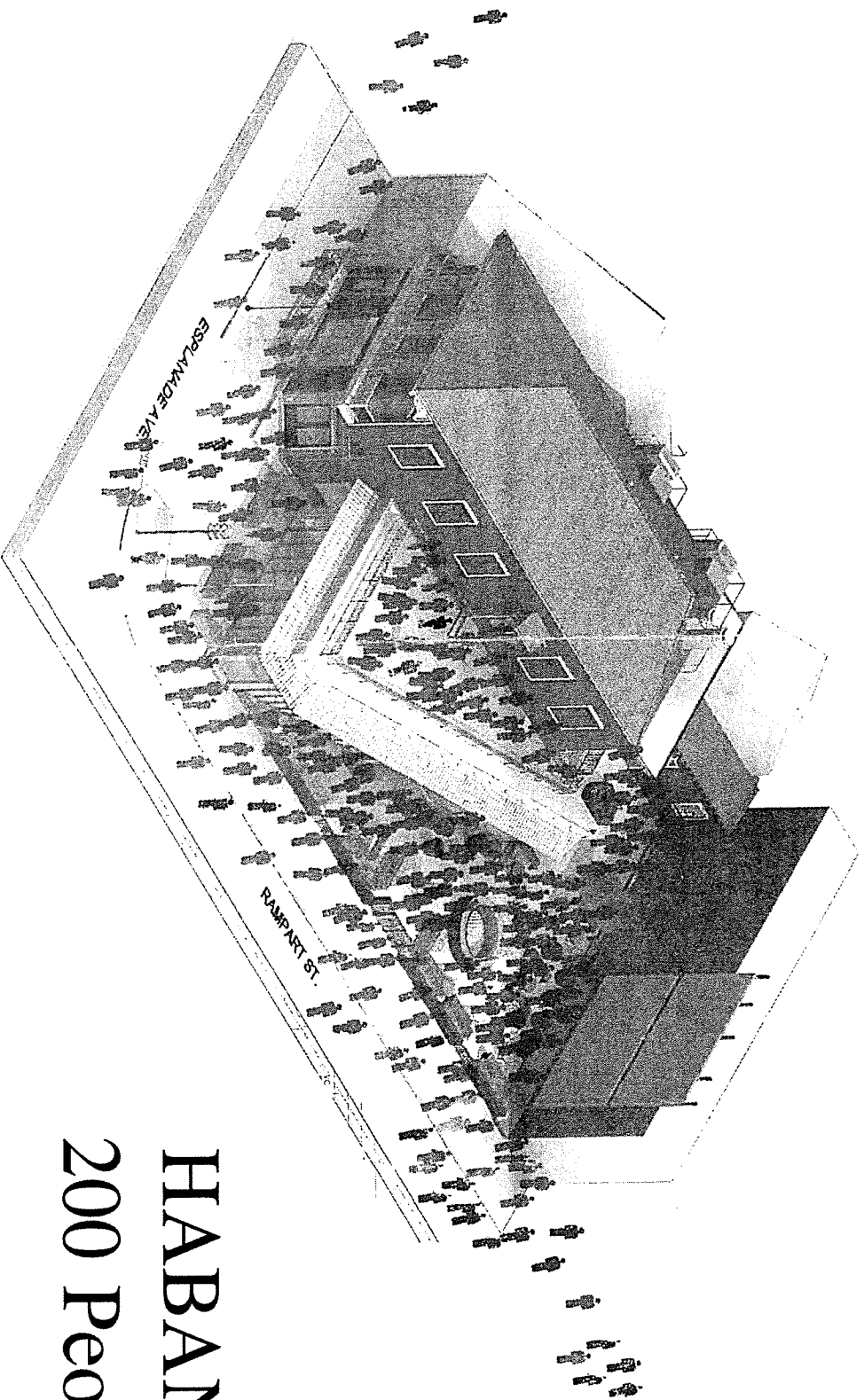
*Improving Design Through Education, Knowledge and Understanding of the Codes*

Contact: Robert Miller – 850-581-2174 - Email: [RLM@RLMarch.com](mailto:RLM@RLMarch.com) - Web Site: [www.RLMarch.com](http://www.RLMarch.com)



Miller's Report calculates that 272 people can be held within the ground floor dining and courtyard area. Another 112 people can be held on the rooftop. That's 384 people.

Here is an illustration of Café Habana with just 200 people.



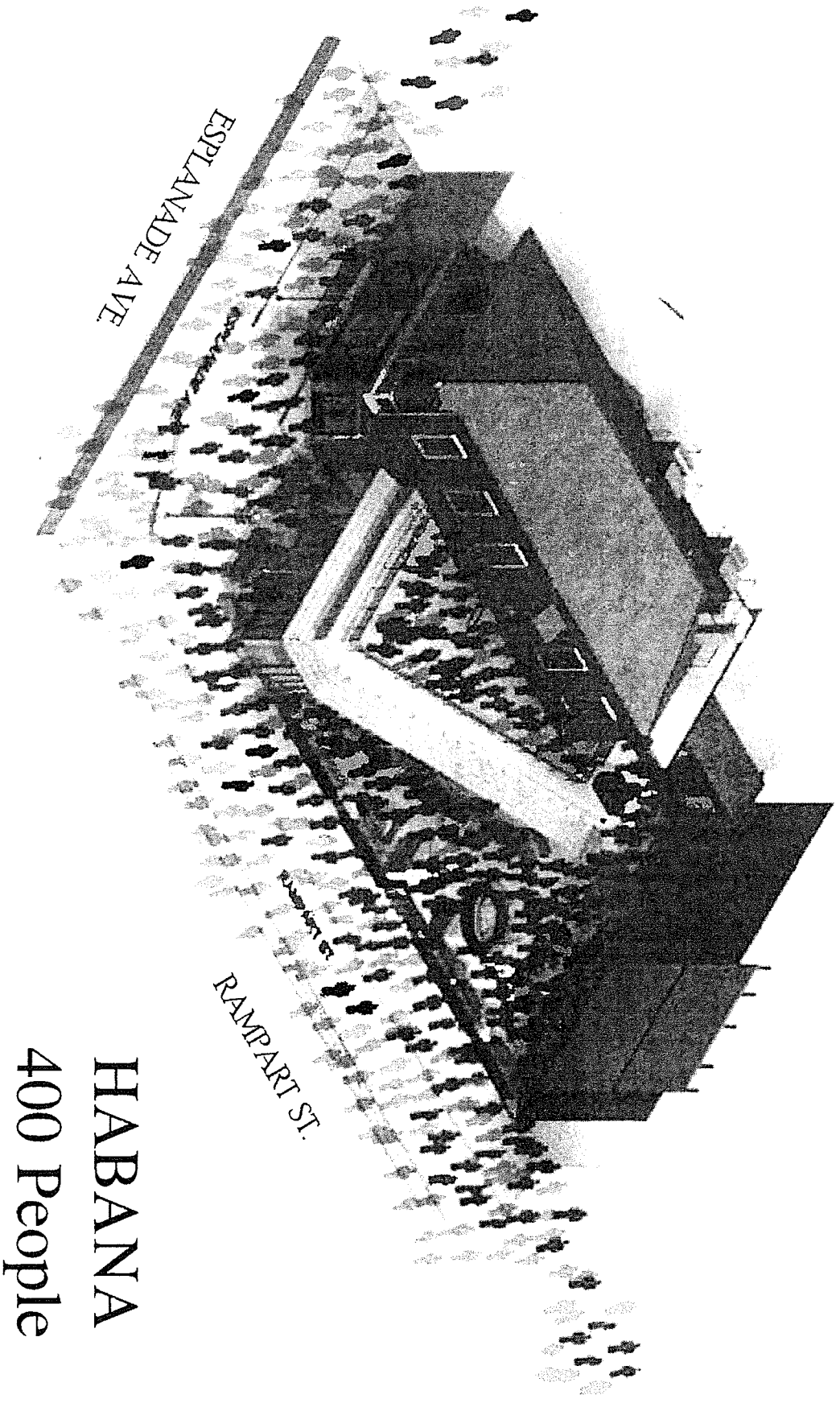
HABANA  
200 People



Miller's report calculates that the property can hold 384 people.

Here is an illustration of Café Habana with 400 people.





HABANA  
400 People



**AFFIDAVIT**

STATE OF LOUISIANA  
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary, came and appeared: **ARNO S. BOMMER**

A person of the full age of majority, domiciled in Harris County, Texas, who, after being duly sworn, did depose and say:

That he is employed as a consultant certified by the Institute of Noise Control Engineering, specializing in the science of acoustics, noise and vibration at Collaboration in Science and Technology Inc., in Houston, Texas;

**1. Board Certification**

I am board certified by the Institute of Noise Control Engineering, a process that involves qualifications and rigorous testing.

**2. Previously certified by the Civil District Court as an expert in noise measurement and interpretation of the City of New Orleans Noise Ordinance and methodology previously relied-upon by Judge Ethel Simms Julien, in finding a nuisance bar in violation of injunction.**

In previous cases, Hon. Ethel Simms Julien and the Hon. Christopher Bruno accepted me as an expert in noise and relied upon my findings.

**I offer the following opinions with respect to the Café Habana based on the plans dated November 18, 2014:**

1. A typical "busy" restaurant sound level is about 65 dBA. A very noisy restaurant can be 80 to 85 dBA.
2. The outdoor portions of Café Habana may occasionally exceed 80 dBA.
3. People tend to talk louder when there are other nearby sources of noise. The traffic on N. Rampart and Esplanade as well as the HVAC equipment and proposed fountains will provide background noise that patrons will have to speak over, causing them to speak with raised voices.
4. When the curtainwall doors are open, there will be two effects. By itself, the added noise from under the canopy might raise sound levels in the patio by 1 to

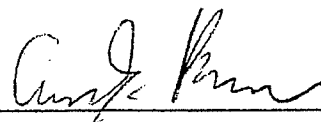
5 dBA. In addition, this increase may also cause the people in the patio area to speak louder, further increasing levels.

5. Other potential source of excessive community noise include HVAC condensing equipment at grade by the stairwell, a condenser unit on the roof, kitchen hood exhaust vents, doors slamming, and wait staff handling plates, trays, and silverware.
6. Although the existing two buildings along the residential property line provide a partial noise barrier, there is a large gap between these buildings adjacent to the stairs with only a low wall (about 6-ft tall). Sound from the courtyard and patio can travel directly through this gap to the adjacent residences.
7. The top of the stairs and 2<sup>nd</sup>-floor walkway are located right at the gap between the buildings. It appears from the plans that people on these stairs and walkway can look right down onto the adjacent residential property, and any sounds they make will travel directly onto the residential property.
8. The existing neighboring building on Rampart can reflect sounds from much of Café Habana through the gap between the buildings towards the adjacent residences.
9. The roof of the existing 2-story building also has a large overhang that can reflect sound from the courtyard and patio back down to the ground at the residences.
10. Taking into account distance effects, sound from a 65 dBA “busy” restaurant would be reduced to about 59 dBA at 50 ft (the approximate distance from the center of the restaurant to the nearest residences). This would be steady restaurant noise. If the restaurant sounds were between a “busy restaurant” and a “noisy restaurant”, then sound levels at the neighboring residences would exceed 60 dBA with an L<sub>10</sub> measurement (the sound level exceeded 10% of the time).
11. In addition to the steady noise from the restaurant, there are often periodic louder sounds from loud conversations (laughing, very loud talking, etc.) or from events such as things being dropped. Brief sounds from people talking on the stairs can also be very loud. These types of sounds are likely to increase maximum sound levels from the restaurant at the neighboring residences to 65 dBA or higher.
12. The restaurant is in the VCC zone where the nighttime ordinance is an L<sub>10</sub> of 60 dBA and an L<sub>max</sub> of 65 dBA.
13. The adjacent residences are in the VCR zone where the nighttime ordinance (after 10 pm) is an L<sub>10</sub> of 55 dBA and an L<sub>max</sub> of 60 dBA. The applicable limits of

the New Orleans noise ordinance are from the receiving land use, not the use of the sound source.

14. The HVAC equipment is rated at 66 to 69 dBA at 10 ft. The three closest units at grade range from 3 ft to 10 ft from the property line. Although there is a 6-ft wall at the property line, there are also adjacent walls and the underside of the stairs and balcony that will reflect sound over the wall. As a result, the HVAC noise is expected to produce sound levels over 70 dBA at the property line, greatly exceeding the nighttime noise ordinance and possibly exceeding the daytime ordinance.
15. There is line-of-sight from adjacent residences to the rooftop kitchen vent fan and walk-in-cooler condenser. I do not have any specific noise data for these, but it is likely that they will also produce excessive noise at the property line.
16. The restaurant sound levels from the HVAC equipment and from patrons are expected to regularly exceed the residential noise limit of the New Orleans noise ordinance after 10 pm.
17. With a possible standing-room capacity of over 400 people that was testified to at a committee meeting, expected sound levels could be 10 dBA louder due to the number of added patrons plus the expected effect of patrons having to further raise their voices.
18. The adjacent residences at 1026 Esplanade and 1028 Esplanade have backyards that are currently shielded from traffic noise by the buildings between the backyards and the roads, and these quiet backyards and their overlooking windows will be most affected by noise from Café Habana.
19. The proposed establishment would significantly alter the soundscape in the adjacent residential areas, adversely affecting the neighborhood's quaintness and the *toute ensemble* of the Vieux Carre. It would increase foot traffic along N. Rampart and Esplanade. Not only would patrons make sound within the site, they would also make sound from sidewalks while they are on a waiting list for a table. Because of this, the increased noise effect would spill out from the restaurant into the surrounding area.

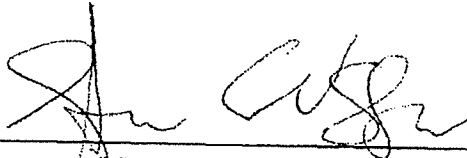
The foregoing facts are known personally to Affiant, Arno S. Bommer.



---

ARNO S. BOMMER

Sworn to and subscribed before me,  
This 7th day of January, 2015.

  
\_\_\_\_\_  
(Notary Signature)

\_\_\_\_\_  
(Print Notary name and #)  
Notary Public  
State of Louisiana

Stephen H. Wussow, Notary Public  
and Attorney at Law (LSBA No.35391)  
355 Canal Street, Suite 2850  
New Orleans, Louisiana 70130  
Parish of Orleans, State of Louisiana  
My Commission is for Life.



## **CURRICULUM VITAE**

### **ARNO S. BOMMER - PRINCIPAL CONSULTANT**

**Collaboration in Science and Technology Inc.**  
16155 Park Row, Ste. 150, Houston, TX 77084-6971  
Phone: (281) 492-2784 Fax: (281) 492-1434  
E Mail: [arno@cstiacoustics.com](mailto:arno@cstiacoustics.com)

Birth Date: 25 February 1960

Birth Place: Salem, MA

Citizenship: U.S.

### **PROFESSIONAL REGISTRATION**

Board Certified by the Institute of Noise Control Engineering (INCE)

### **EDUCATION**

Massachusetts Institute of Technology, B.S., Architectural Design, 1982

### **PROFESSIONAL EXPERIENCE**

MIT Energy Lab, Programmer/Researcher, 1978-1980  
MIT Dept. of Architecture, Renovator, 1981  
Hoover Keith & Bruce Inc., Consultant, 1982-1987  
Collaboration in Science and Technology Inc., Supervisory Consultant,  
1987-Present

### **HONORS AND SOCIETIES**

Former President, MIT Alumni Club of South Texas  
Member, Acoustical Society of America  
Former Board Member, Institute of Noise Control Engineering  
Past Chairman, Houston Chapter of Acoustical Society of America

### **PROFESSIONAL RESPONSIBILITIES AND PROJECTS**

At Collaboration in Science and Technology Inc. (CSTI), Mr. Bommer has worked on a variety of acoustical projects, from equipment noise tests to micro-chip manufacturing plant vibration studies.

In the field of industrial noise and vibration control, Mr. Bommer has worked in power plants, petrochemical plants, materials-processing plants, electronics manufacturing plants, offshore platforms, and aircraft



manufacturing facilities. He has worked on existing facilities and facilities in the design stage.

Mr. Bommer has conducted noise modeling and made noise and vibration measurements. He has designed treatments to reduce in-plant and community noise by reducing the sound power of the sound source, limiting the effectiveness of the sound transmission path, and isolating the sound receiver.

On legal cases, Mr. Bommer has made sound measurements, conducted modeling and acoustical calculations, and provided expert-witness testimony.

He co-authored the 2nd edition of "Noise, Vibration, and Ultrasound," Chapter 20, The Occupational Environment: Its Evaluation and Control. This is the standard industrial hygiene textbook used in the US.

## **CHAPTERS IN BOOKS**

A House Call from Space, Booklet for Children of Parents With End Stage Renal Disease, with R. Smith, A.S. Bommer, and L.M. Bruce, 1986.

"Noise, Vibration, and Ultrasound," Chapter 20, The Occupational Environment: Its Evaluation and Control, with Arno S. Bommer and Charles T. Moritz, Salvatore R. DiNardi (ed.), AIHA, Fairfax, VA, 1997.

"Noise, Vibration, and Ultrasound," Chapter 20, The Occupational Environment: Its Evaluation and Control 2nd Edition, with Arno S. Bommer and Charles T. Moritz, Salvatore R. DiNardi (ed.), AIHA, Fairfax, VA, 2003.

"Sound Power Level Predictions for Industrial Machinery," Chapter, Handbook of Noise and Vibration, with Arno Bommer and Charles T. Moritz, Malcolm Crocker (ed.), John Wiley & Sons, Inc., New York, NY, 2005.

## **OTHER PUBLICATIONS**

"Cogeneration noise sources and control," with R. D. Bruce, The Journal of the Acoustical Society of America, Vol. 90, No. 4, Pt. 2, October 1991, p. 2242.

"Long-Term Ambient Sound Monitoring in National Parks," Sound and Vibration, with R. D. Bruce, February 1992, pp. 16-18.

"Special Concerns of Noise Control on Offshore Platforms," J. Acoust. Soc. Am., with R. D. Bruce, Vol. 92, No. 4, Pt. 2, October 1992, p. 2381.

"Cogeneration Plant Noise Analysis and Control," with R. D. Bruce and G.R. Hepler, presented at the Power-Gen Americas '93, Dallas, TX, November 1993.

"Sound isolation of an audiometric test room," with Charles T. Moritz, The Journal of the Acoustical Society of America, Vol. 96, No. 5, Pt. 2, November 1994, p. 3267.

"The Occupational Noise Book," with Robert D. Bruce, NIOSH, (in review) 2004.

"The presence of infrasound in our everyday life," with Bruce and Lefkowitz, The Journal of the Acoustical Society of America, Vol. 124, No. 4, Pt. 2, October 2008, p. 2450.

"A New Approach to Noise Control in the Workplace," with Bruce, Lefkowitz, and Levesque, Inter-Noise 2009, Ottawa, ON, CA, Aug. 2009.

"Ultrasound in the Home and Workplace," with Bruce and Lefkowitz, Inter-Noise 2009, Ottawa, ON, CA, Aug. 2009

"Making shop noise tests under difficult circumstances," with Bruce, Inter-Noise 2009, Ottawa, ON, CA, Aug. 2009

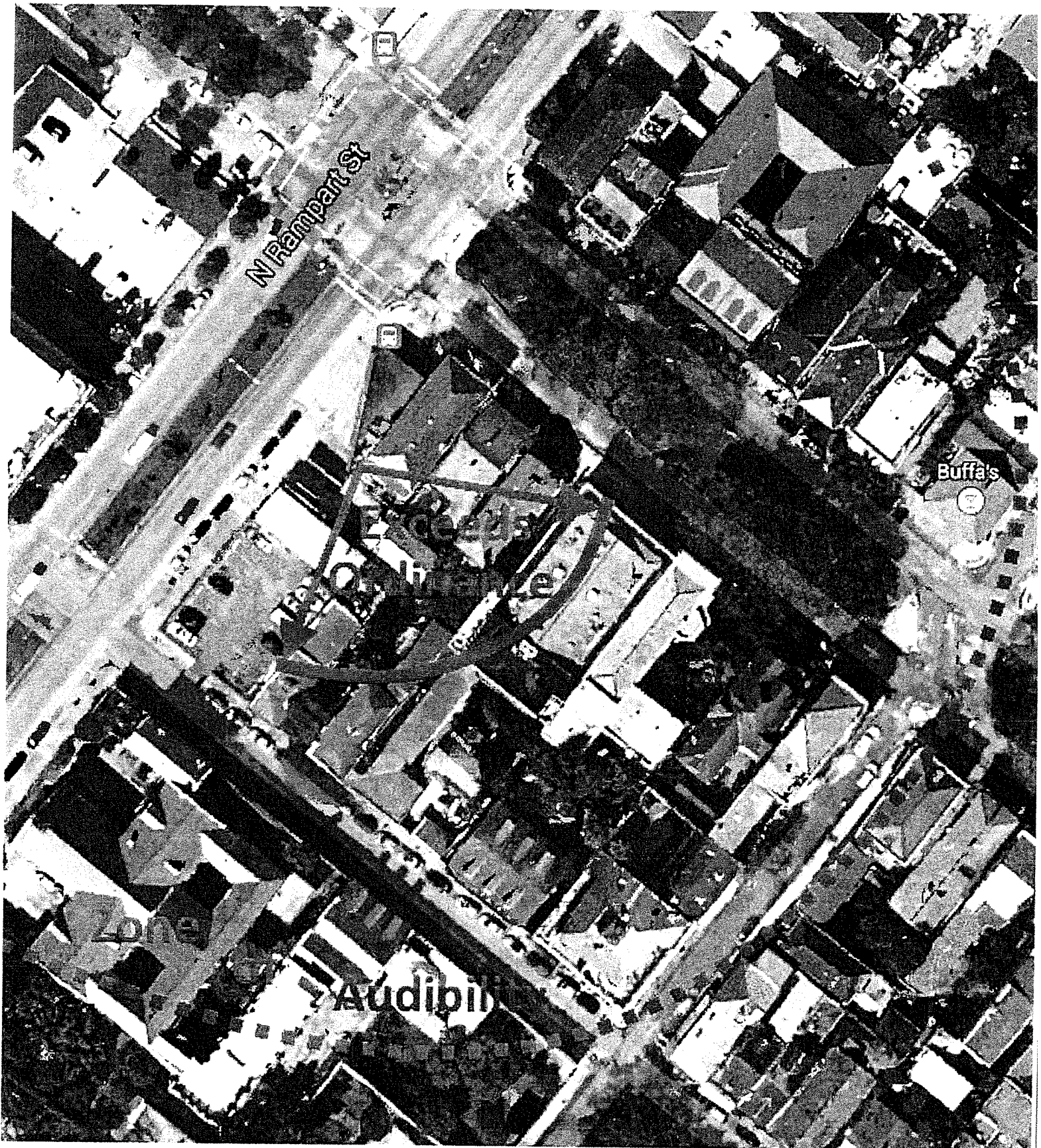
#### **DEPOSITIONS AND TESTIMONY**

Deposition regarding noise from Paving Backup Alarm. CSTI Job No. 5935. 2007. Work conducted for Willette & Guerra, LLP of McAllen, TX.

Deposition regarding noise from Funky 544. CSTI Job No. 6123. 2012. Work conducted for Smith Stagg, LLC of New Orleans, LA.

Deposition regarding noise from Old Opera House. CSTI Job No. 6123. 2012. Work conducted for Smith Stagg, LLC of New Orleans, LA.







**Robert Brackin**

ENVIRONMENTAL  
QUALITY EXPERT



## Comprehensive Compliance Solutions

9744 Cal Road  
Baton Rouge, LA 70809

January 7, 2015

Mr. Stuart Smith  
One Canal Place  
365 Canal Street, Suite 2850  
New Orleans, Louisiana 70130

Dear Mr. Smith,

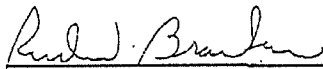
I retired from the Department of Environmental Quality (LDEQ) on January 1, 2010 after 25 years of service. My resume is attached. I have reviewed LDEQ documents related to the remediation of property located at 1036-1038 and 1040 Esplanade Avenue in New Orleans, LA.

A developer wants to build a restaurant called Café Habana at that location. I have some concerns in that respect. My concerns are as follows:

- 1) the removal of some of the contaminated soil and six steel underground storage tanks that had been buried for more than sixty years is not adequate because a significant amount of hazardous substances remains on the property.
- 2) If the ultimate purpose of air testing is to determine the potential health impact to the public and reduce uncertainty in the assessment, insufficient air testing was done during the closure. Additional testing has to be conducted prior to construction of this restaurant in my opinion.
- 3) The developer is required to notify LDEQ that the intended land use has changed so that LDEQ can re-evaluate the contaminated areas that was of interest in the remediation. (See attached conveyance notice, indicating the property has not been released for non-industrial use.) **I have not found any such land use change notification in the public records at LDEQ.**

- 4) A groundwater sample should have been taken since RECAP standards were exceeded at a depth of 8 feet, a depth near or below the water table.
- 5) Soil samples should have been taken at the property line since the samples taken on the southern end of Tank 2 and Tank 3 exceeded RECAP standards and were in close proximity to neighboring property.
- 6) Insufficient testing was performed and therefore the possibility that contamination has spread to neighboring properties cannot be eliminated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard W. Brackin", written over a horizontal line.

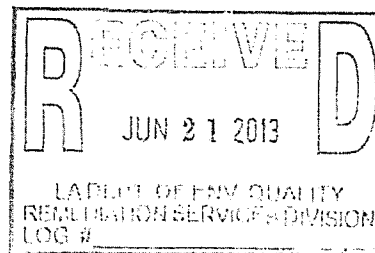
Richard Brackin



Leaaf

June 18, 2013  
Leaaf# WIL-007

Mr. Tom Harris Admin.  
UST and Remediation Division  
LA DEQ  
P.O. Box 4312  
Baton Rouge, LA 70821-4312



RE: Conveyance Notice  
1040 Esplanade Ave  
New Orleans, LA 70116  
(Orleans Parish)  
Facility ID No. 36-019386  
AI No. 184805

Remediation Services Division	
Manager	_____
Team Leader	_____
AI#	_____
TEMPO User #	_____
<input type="checkbox"/>	Out of Office # _____

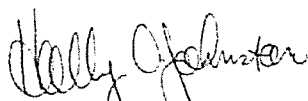
Mr. Harris:

Leaaf Environmental, LLC (Leaaf) is submitting this letter documenting the filing of the Conveyance Notice for the above referenced site.

The Conveyance Notice was filed with Orleans Parish conveyance records on June 12, 2013. The original and one (1) photocopy of the notice are attached for LDEQ records.

If you have any additional questions regarding this matter, please contact Jesse Hoppes or Jim Blazek at (504) 342-2687.

Sincerely,

  
Holly Q Johnston  
Bookkeeper

RECEIVED

JUL 10

SOUTHEAST REGIONAL  
OFFICE

Leaaf environmental, llc

www.leaaf.com

812 Rupp Street, Gretna, LA 70053  
New Orleans office: 2828 Burgundy, New Orleans, LA 70117  
Lafayette office: 161 Glynwood Avenue, Lafayette, LA 70506

(504) 342-2687 Fax (504) 342-2715

## CONVEYANCE NOTICE

Esplanade NOLA LLC hereby notifies the public that the following described Area of Investigation (AOI), Louisiana Department of Environmental Quality (LDEQ) Agency Interest Number 184805, was closed with contaminant levels present that are acceptable for industrial/commercial use of the property as described in LDEQ's Risk Evaluation/ Corrective Action Program (RECAP), Section 2.17. In accordance with LAC 33:I., Chapter 13, if land use is to change from industrial to non-industrial, the responsible party shall notify the LDEQ within 30 days and the AOI shall be reevaluated to determine if conditions are appropriate for the proposed land use.

This site was closed in accordance with the Louisiana Administrative Code, Title 33:I., Chapter 13. Information regarding this site is available in the LDEQ public record and may be obtained by contacting the LDEQ Records Manager at (225) 219-3168. Inquiries regarding the contents of this site may be directed to Sean Meenan at 757 Fulton Street, Brooklyn, NY 11217.

### AOI Description:

The former service station is located on the corner of Esplanade Avenue and North Rampart Street at 1040 Esplanade Avenue, New Orleans, LA. The AOI includes all of the former tankholds excluding the used oil tank (T-5) based on exceedances RECAP above non-industrial screening standards. Maximum analytical results for constituents of concern (COCs) at the site are summarized on Table 1.

### LEGAL DESCRIPTION:

One certain piece or portion of ground, together with all the buildings & improvements thereon and all of the rights, ways, servitudes, privileges, advantages and appurtenances thereunto belonging or in anywise appertaining, situated in the State of Louisiana, Parish of Orleans, Square No. 108 of the Second Municipal District of the City of New Orleans, which square is bounded by Burgundy Street, Barracks Street, North Rampart Street and Esplanade Avenue, designated as Lot 9-X on a plan of resubdivision of Lot 3 and Pt. Lot 9 into lot 9-X dated January 21, 2013 by Gilbert, Kelly & Couturie, Inc. and is more particularly described as follows to wit:

LOT 9-X forms the corner and begins at the point of intersection of the southerly right of way line of N. Rampart Street and the westerly right of way line of Esplanade Avenue; thence in a southerly direction along the westerly right of way line of Esplanade Avenue, a distance of 31 feet 2 inches 0 lines (31.2.0) to a point; thence in a westerly direction through an interior angle of 90 degrees 32 minutes 10 seconds, a distance of 80 feet 11 inches 0 lines (80.11.0) Actual, 81 feet 1 inch 0 lines (81.1.0) Title to a point; thence widening in a southerly direction through an interior angle of 269 degrees 27 minutes 50 seconds, a distance of 33 feet 2 inches 0 lines (33.2.0) to a point; thence in a westerly direction through an interior angle of 90 degrees 32 minutes 10 seconds, a distance of

NOTARIAL ARCHIVES OF ORLEANS PARISH  
BOOK # 2013-22056 DT 06/12/13  
TYPE: NOTICE FEE \$75.00 PG 4

SO feet 2 inches 0 lines (50.2.0) to a point; thence in a northerly direction through an interior angle of 89 degrees 27 minutes SO seconds, a distance of 64 feet 4 inches 0 lines (64.4.0) Actual, 63 feet 11 inches 3 lines (63.11.3) Title, to a point on the southerly right of way line of N. Rampart Street; thence in an easterly direction through an interior angle of 90 degrees 32 minutes 10 seconds along the southerly right of way line of N. Rampart Street, a distance of 131 feet 1 inch 0 lines (131.1.0) back to the point of intersection of the southerly right of way line of N. Rampart Street and the westerly right of way line of Esplanade Avenue, the point of beginning. Lot 9-X contains S,750.7S square feet. The improvements thereon bear Municipal Nos. 1040 Esplanade Avenue and 1310-12-14 N. Rampart Street, New Orleans, Louisiana 70116.

  
Signature of Person Filing Parish Record

Sean Meehan President  
Typed Name and Title of Person Filing Parish Record

06/06/13  
Date

*(A true copy of the document certified by the parish clerk of court must be sent to the Underground Storage Division – Regional Office of site location)*

**TABLE 1: SOIL ANALYTICAL DATA SHOWING THE HIGHEST CONCENTRATION REMAINING ON-SITE OF THOSE COCS ABOVE THE NON-INDUTRAIL SCREENING STANDARD.**

**1040 Esplanade Avenue, New Orleans, LA (Sitewide AOI)**

Constituent of Concern (COCs)	Location of Maximum Concentration in Soil	Depth of Maximum Concentration in Soil (ft. bgs.)	Maximum Concentration Remaining on Site (mg/kg)	SOIL_SSni RECAP Standard (mg/kg)	SOIL_SSi RECAP Standard (mg/kg)
<b>TPH-GRO*</b>	<b>T1-S</b>	<b>8'</b>	<b>762*</b>	<b>65</b>	<b>510</b>
Aliphatic (>C8-C10)	T-1S	7'	366	120	880
Aromatics (>C8-C10)	T-1S	7'	185	65	510
<b>TPH-DRO**</b>	<b>T-1S</b>	<b>8'</b>	<b>583**</b>	<b>65</b>	<b>510</b>
Aromatic (>C10-C12)	T1 S	8'	183	120	1,100

mg/kg – Milligrams per Kilogram

Ft bgs – Feet below ground surface

TPH-GRO - Total Petroleum Hydrocarbons – Gasoline Range Organics

TPH-DRO – Total Petroleum Hydrocarbons – Diesel Range Organics

RECAP – Risk Evaluation Corrective Action Program

SSni – Screening Standard for soil protective of human non-industrial exposure

SSi – Screening Standard for soil protective of human industrial exposure

**Notes:**

Bold Values show exceedances above applicable RECAP Standards

\*TPH-GRO results were superseded by VPH Fractions

\*\*TPH-DRO results were superseded by EPH Fractions

